S. HRG. 100-700

THE BANKING JURISDICTION WITHIN THE UNITED STATES/CANADA FREE TRADE AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE TREATMENT OF U.S. BANKS AS IF THEY WERE CANADIAN BANKS FOR PURPOSES OF CANADIAN LAW AND TO TREAT CANADIAN BANKS AS IF THEY WERE U.S. BANKS FOR PURPOSES OF U.S. LAWS. IN THE ALASKAN OIL AREA, THE AGREEMENT PERMITS THE EXPORT OF UP TO 50,000 BARRELS PER DAY OF NORTH SLOPE OIL

MAY 20, 1988

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THE BANKING JURISDICTION WITHIN THE UNITED STATES/CANADA FREE TRADE AGREEMENT

FRIDAY, MAY 20, 1988

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator Alan J. Dixon presiding.

Present: Senators Dixon, Sasser, Graham, D'Amato, Gramm, Bond, and Chafee.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON [presiding]. We are here this morning to consider the aspects of the United States-Canada Free Trade Agreement that are within the jurisdiction of the Banking Committee. Two important areas of the agreement are within our jurisdiction: financial services, and Alaskan oil.

The financial services provisions of the agreement are fundamentally sound and will benefit both the United States and Canada. They eliminate growth capital on both market share restrictions currently placed on U.S. banks operating in Canada, which will enable our banks to compete with their Canadian counterparts on a more fair and equitable basis.

The basic thrust of the agreement is to treat U.S. banks as if they were Canadian banks for purposes of Canadian law and to treat Canadian banks as if they were U.S. banks for purposes of our laws.

The same principle generally applies in the securities and insurance areas. For example, the agreement removes Canada's so-called 10/25 law which currently prevents a nonresident company from acquiring more than 10 percent ownership of a Canadian insurance trust of loan company and limits total nonresident ownership to 25 percent.

In the Alaskan oil area, the agreement permits the export of up to 50,000 barrels per day of North Slope crude that currently cannot be exported because of restrictions in the Export Administration Act.

This hearing is particularly important because the committee will be marking up its suggestions for the legislation implementing the agreement this next Tuesday afternoon.

The administration will send up the implementing legislation which is considered under procedures that make it unamendable.

But the administration will not act until after June 1, and our markup next week will give the committee an opportunity to make formal recommendations to the administration as to what the implementing legislation should look like, in these hearings.

I appreciate very much the willingness of all of today's witnesses to appear before this committee. We appreciate having the benefit of having your views and suggestions.

I also want to apologize in advance to all of our witnesses this morning because unfortunately we are going to have five roll calls back to back beginning at 11:30 a.m., on the INF Treaty. I would greatly appreciate it, therefore, if every witness would limit his or her oral testimony to 5 minutes, and I note that Chairman Proxmire made the same 5-minute request in writing to each of the witnesses in his letter to the witnesses. So, whatever complete statement you have beyond the 5-minute time limit will, of course, be reproduced in the record, but we ask you to limit your remarks to 5 minutes.

Our first panel of witnesses consists of: William Merkin, Deputy Assistant United States Trade Representative.

Is Merkin here?

[No response.]

Senator DIXON. Perhaps he will show up as we proceed.

We have then James Ammerman, Director of the Office of International Banking and Portfolio Investment of the Treasury Department; and Stephen Canner, Director of the Office of International Investment of the Treasury Department.

Our second panel will consist of: Edward Yingling, executive director, American Bankers Association; Robert D. Hormats, vice chairman of the Goldman Sachs International Corp.; Peter Lefkin, counsel for the American Insurance Association; and David Ruth, director of International Corporate Affairs of the American Express Co.

Mr. Ammerman, I believe we will proceed with you, if you don't mind, in the absence of Mr. Merkin.

STATEMENT OF JAMES AMMERMAN, DIRECTOR, OFFICE OF INTERNATIONAL BANKING AND PORTFOLIO INVESTMENT, U.S. DEPARTMENT OF THE TREASURY

Mr. AMMERMAN. I appreciate the opportunity to appear before your committee. If you or any members have questions that cannot be answered this morning, I would be more than happy to follow up. I have a statement for the record that I would, with your permission, like to submit.

Senator DIXON. It will be reproduced in full.

Mr. AMMERMAN. It is the most comprehensive trade agreement ever negotiated between two countries. It is one that breaks new ground with respect to financial services as well as other services, investment, and technology.

FIRST BINATIONAL AGREEMENT

The agreement on financial services is by itself a landmark, in that it is the first binational agreement entered into by the United States covering the entire financial sector.

Let me now discuss what it means and what the implications are for the financial sectors in our two countries.

Our objective in these negotiations was to make significant progress in obtaining equality of competitive opportunity for U.S. financial firms operating in or wishing to enter Canada. Put in another way, we sought treatment equivalent to that accorded domestic Canadian financial institutions. In a Treasury Department report prepared for this committee in December 1986, we highlighted the barriers that existed in Canada's financial sector. This document, the "National Treatment Study," served as the roadmap in our quest for equal treatment for U.S. firms. We strove for, and believe we have achieved, an agreement yielding highly satisfactory results.

Mr. Chairman, let me now summarize the actual agreement and the commitments made by each country.

SUMMARY OF COMMITMENTS

As to Canadian commitments, for the U.S. firms there will be a substantial removal of discriminatory treatment in Canada. U.S. commercial banks operating in Canada will be relieved from onerous limits on their ability to compete and grow. Currently, the domestic assets of foreign bank subsidiaries operating in Canada, known as schedule B banks, are limited to 16 percent of all domestic assets of the Canadian banking system.

In addition, foreign bank subsidiaries face individual capital and leveraging limits and other restraints such as restrictions on the sale of loans to the parent bank. When the financial services chapter of the Free Trade Agreement goes into effect, U.S. commercial bank subsidiaries in Canada will be exempt from the current discriminatory restrictions on market share, asset growth, and capital expansion, in the same way as Canadian banks are exempt. U.S. commercial banks will also be allowed to establish or acquire securities firms or federally regulated Canadian insurance and trust companies, again in the same manner as Canadian banks.

In addition to helping the U.S. commercial banks compete on a more equal basis in Canada, the agreement also has substantial benefits for U.S. financial institutions other than commercial banks. In particular, all U.S. financial institutions will be better able to grow and take full advantage of Canada's financial market liberalization due to removal of the so-called 10/25 rule. This rule prevents a nonresident from acquiring more than a 10-percent ownership interest in certain types of Canadian financial services companies; a group of nonresidents is limited in the aggregate to a 25-percent interest.

Under current regulations, U.S. and other foreign insurance companies have perhaps been the most disadvantaged because of the 10/25 rule. Under this agreement, U.S. firms will receive the same rights as Canadian companies to diversify in the financial sector by establishing or acquiring federally regulated insurance companies, trust companies, schedule B banks, or securities firms.

While Ontario, Quebec, and other provinces have liberalized their securities markets and have welcomed foreign investors, the Federal Government implemented a policy of reciprocity which has

held up the applications for entry by U.S. securities firms and banks. Under this agreement, these applications will be reviewed strictly on a prudential basis, just as for Canadian firms, and not on a reciprocity basis.

Senator CHAFEE. If I could interrupt one moment.

In the Finance Committee we are involved with a conference with the House on the prescriptive drug measure. I have to attend that, which starts right now. I would like to submit a statement.

Also, I am strongly in favor of the United States-Canadian Free Trade Agreement, and I am interested in the liberalization of the provisions mentioned here.

Senator DIXON. We thank you very much.

That statement will be reproduced in the record in full.

[Statement of Senator Chafee follows:]

SPEECH BY

SENATOR JOHN H. CHAFEE

TO

SENATE BANKING COMMITTEE

ON CANADA FREE TRADE AGREEMENT

(MAY 20, 1988)

MR. CHAIRMAN. THANK YOU FOR CALLING THIS HEARING TODAY TO DISCUSS THE ELEMENTS OF THE U.S.-CANADA FREE TRADE AGREEMENT WHICH FALL IN THE DOMAIN OF THE SENATE BANKING COMMITTEE. THESE ARE PROVISIONS ON FINANCIAL SERVICES AND ALASKAN OIL.

LET ME FIRST INDICATE MY STRONG SUPPORT FOR THE U.S.-CANADA FREE TRADE AGREEMENT AS A WHOLE. THIS AGREEMENT HAS BEEN SIGNED BY PRESIDENT REAGAN AND PRIME MINISTER MULRONEY, AND IS TRULY A DOCUMENT OF HISTORIC IMPACT. IT BREAKS NEW GROUND IN INVESTMENT, FINANCIAL SERVICES, INTELLECTUAL PROPERTY, SERVICE INDUSTRIES, AND GUARANTEES THE U.S. ACCESS TO CANADIAN ENERGY SOURCES. RATIFICATION OF THIS AGREEMENT WOULD VINDICATE THE VISION AND EFFORT THAT IT REPRESENTS.

THE FINANCIAL SERVICES AND ALASKAN OIL PROVISIONS ARE PART AND PARCEL OF THIS NEW LOOK. THE FIRST MATTER COVERS REMOVAL OF CERTAIN BARRIERS TO THE OPERATION IN CANADA OF AMERICAN FINANCIAL INSTITUTIONS, SUCH AS COMMERCIAL BANKS, INVESTMENT BANKS, AND

INSURANCE FIRMS. CANADIAN BANKS IN TURN WOULD GAIN FROM ANY LIBERALIZATION OF THE GLASS-STEAGALL ACT, SUCH AS THE PROXMIRE FINANCIAL MODERNIZATION ACT, WHICH PASSED THE SENATE SO IMPRESSIVELY BY A VOTE OF 94-2. ALL BANKS IN THE U.S. WOULD ALSO BE ALLOWED TO UNDERWRITE AND DEAL IN DEBT OBLIGATIONS GUARANTEED BY THE GOVERNMENT OF CANADA OR ANY OF ITS POLITICAL SUBDIVISIONS.

THE ALASKAN OIL PROVISIONS WOULD ALLOW FOR EXPORT OF 50,000 BARRELS PER DAY OF NORTH SLOPE CRUDE FROM ALASKA TO CANADA AS LONG AS IT WAS TRANSPORTED ON U.S. FLAG VESSELS.

THEREFORE I HOPE THAT IMPLEMENTING LEGISLATION CAN BE DRAFTED QUICKLY, AND THAT IT CAN RECEIVE AN OVERWHELMING VOTE OF SUPPORT AT THIS COMMITTEE'S MARK-UP ON MAY 25.

I LOOK FORWARD TO THE TESTIMONY OF THE WITNESSES.

Senator DIXON. Please proceed.

Mr. AMMERMAN. Thank you, Mr. Chairman.

To summarize the Canadian commitments, U.S. commercial banks, securities firms, insurance companies, and other financial institutions will be granted significantly better treatment that will allow them to compete more effectively in Canada with domestic firms.

As to U.S. commitments, under the agreement the U.S. also made a number of specific commitments. First, the U.S. agreed to guarantee the right of Canadian banks to retain their multistate branches in the United States that were grandfathered under the International Banking Act of 1978.

Second, if the Glass-Steagall Act is amended, we committed to extend the same benefits we grant our own firms to Canadian financial institutions in the United States.

Third, in an effort to be responsive to reasonable Canadian concerns regarding the treatment of U.S. subsidiaries of Canadian banks and securities firms which merge in Canada, the United States agreed to allow Canadian banks, as well as U.S. and other foreign banks, in the United States to underwrite and deal in debt obligations guaranteed by the Government of Canada, or its political subdivisions. This is a new measure for United States, Canadian, and other foreign banks that is consistent with the existing ability of banks to deal in securities of the U.S. Government or its political subdivisions.

LIBERALIZING OUR MARKETS

With regard to commitments by both countries, in addition to these specific measures, the United States and Canada both made an important commitment to continue liberalizing our markets and extending the liberalization to firms of the other party after the Free Trade Agreement goes into effect, contingent upon the other party fulfilling its commitment to liberalize.

We have established a formal consultative mechanism between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee this liberalization and to resolve disputes arising from commitments already concluded in the financial services part of the Free Trade Agreement.

As to dispute settlement for financial services, the Financial Services Chapter is excluded from the overall FTA dispute settlement mechanism in its place, we created a consultative mechanism between the U.S. Treasury and the Canadian Department of Finance to serve both as the vehicle for resolving disputes and for seeking further liberalizations.

We felt that a different mechanism from that in the overall FTA was necessary in the financial services area. In our view, financial services are fundamentally different from most other services and from the tradeable goods sector because prudential and regulatory concerns play such an important role. Accordingly, we tried to tailor a consultation and dispute settlement mechanism that reflected the different and special nature of the financial services sector.

I would be happy to answer questions at this time.

[The complete prepared statement of Mr. Ammerman follows:]

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Director, Office of International Banking and Portfolio Investment
U.S. Department of the Treasury
before the
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C.
May 20, 1988

Financial Services in the U.S.-Canada Free Trade Agreement

Mr. Chairman, I appreciate this opportunity to appear before your Committee to discuss the Financial Services Chapter of the Canada Free Trade Agreement (FTA). Let me say in advance that if you, Mr. Chairman, or any members of your Committee, have any questions which can't fully be answered this morning, I will be more than happy to follow up.

The U.S.-Canada Free Trade Agreement is the most comprehensive trade agreement ever negotiated between two countries, and it is one that breaks new ground with respect to financial services, other services, investment, and technology. The agreement on financial services is by itself a landmark in that it is the first binational agreement entered into by the United States covering the entire financial sector. And the investment agreement is the first of its type entered into by Canada with any country, as my colleague, Mr. Canner, will shortly discuss.

The Financial Services Negotiations

Let me now turn to the Financial Services section of the Free Trade Agreement and discuss its background, what it means and what the implications are for the financial sectors in our two countries.

Our objective in these negotiations was to make significant progress in obtaining equality of competitive opportunity for U.S. financial firms operating in or wishing to enter Canada. Put in another way, we sought treatment equivalent to that accorded domestic Canadian financial institutions. In a Treasury Depart-

ment report prepared for this Committee in December 1986, we highlighted the barriers that existed in Canada's financial sector. This document, the "National Treatment Study," served as the road map in our quest for equal treatment for U.S. firms. We strove for, and believe we have achieved, an agreement yielding highly satisfactory results.

Mr. Chairman, let me now summarize the actual agreement and the commitments made by each country.

Canadian Commitments

For the U.S., there will be a substantial removal of discriminatory treatment in Canada. U.S. commercial banks operating in Canada will be relieved from onerous limits on their ability to compete and grow. Currently, the domestic assets of foreign bank subsidiaries operating in Canada (known as Schedule B banks) are limited to 16 percent of all domestic assets of the Canadian banking system. In addition, foreign bank subsidiaries face individual capital and leveraging limits and other restraints such as restrictions on the sale of loans to the parent bank. When the Financial Services Chapter of the Free Trade Agreement goes into effect, U.S. commercial bank subsidiaries in Canada will be exempt from the current discriminatory restrictions on market share, asset growth, and capital expansion, in the same way as Canadian banks are exempt. U.S. commercial banks will also be allowed to establish or acquire securities firms or federally-regulated Canadian insurance and trust companies, again in the same manner as Canadian banks.

In addition to helping U.S. commercial banks compete on a more equal basis in Canada, the agreement also has substantial benefits for U.S. financial institutions other than commercial banks. In particular, all U.S. financial institutions will be better able to grow and take full advantage of Canada's financial market liberalization due to removal of the so-called "10/25" rule. This rule prevents a nonresident from acquiring more than a 10 percent ownership interest in certain types of Canadian financial services companies; a group of nonresidents is limited in the aggregate to a 25 percent interest. Under current regulations, U.S. and other foreign insurance companies have perhaps been the most disadvantaged because of the "10/25" rule; under this agreement, U.S. firms will receive the same rights as Canadian companies to diversify in the financial sector by establishing or acquiring federally-regulated insurance companies, trust companies, Schedule B banks, or securities firms.

While Ontario, Quebec, and other provinces have liberalized their securities markets and have welcomed foreign investors, the federal government implemented a policy of reciprocity which has held up the applications for entry by U.S. securities firms and banks. Under this agreement, these applications will be reviewed strictly on a prudential basis, just as for Canadian firms, and not on a reciprocity basis.

Senator DIXON. Thank you.
Mr. Canner, you may proceed.

STEPHEN CANNER, DIRECTOR, OFFICE OF INTERNATIONAL INVESTMENT, U.S. DEPARTMENT OF THE TREASURY

Mr. CANNER. Thank you, Mr. Chairman.

I am pleased to be here today to discuss with you and other members of the committee the investment provisions of the United States-Canada Free Trade Agreement.

We are especially pleased with this agreement in that it is the first of its kind to include provisions governing investments in the two countries. This is an historic breakthrough which will benefit us and our bilateral economic relations with Canada and serve to strengthen our efforts in the Uruguay round of trade negotiations in the GATT to reduce and eliminate distortions to trade arising from host country investment policies.

I would ask that my prepared text be inserted in the record. It shows the very different perspective the two sides brought to the negotiating table.

The United States has for two centuries maintained an open investment policy, which was reaffirmed by President Reagan in his investment policy statement of September 3, 1983.

I ask that a copy of that statement be inserted in the record as well. [See p. 50.]

In contrast, since the 1970's the Canadians have had an inward-looking policy manifested in the Foreign Investment Review Act, the acronym for which is FIRA. The market told Canada what it thought of these and other inward-looking economic policies. In large part due to FIRA, direct investment into Canada declined from an annual average of Canadian $684 million in the period 1970–75 to Canadian $372 million in the period 1976–80.

Senator DIXON. Could I interrupt you? If you could, bring the mike a little closer. I think the reporter may be having a little difficulty. Thank you very kindly.

Mr. CANNER. Yes. Thank you.

The Mulroney administration took steps to liberalize the laws and policies from the outset. It ceased blocking foreign investments and replaced FIRA with a new agency, Investment Canada.

INVESTMENT OBJECTIVES

Our investment objectives in the FTA were: first, to prevent any backsliding by the Canadians; and second, to build upon the liberalization already effected by the Mulroney administration. We obviously did not achieve as much as we would have liked, nor for that matter did the Canadians, who resisted liberalization mightily.

But we achieved a substantial and important and even critical measure of success. Let me briefly touch on what we obtained in the agreement.

First, each side agreed to a standstill on existing restrictions that would treat foreigners worse than domestic investors. One aspect of this is to freeze the current Canadian practice of not screening new greenfield investments. This commits Canada to maintain its hands-off policy with respect to greenfield investment.

As for screening and blocking, the agreement limits greatly these practices by raising the asset threshold for screening direct acquisitions from the existing level of $5 million Canadian in current dollars to $150 million Canadian in constant dollars, after a phase-in period.

For a country that was screening greenfield investments and virtually all takeovers just 3 or 4 years ago, Canada has taken a giant step forward. This liberalization limits screening to direct takeovers of the 600 largest firms in Canada. Takeovers of another 6,900 Canadian firms will become exempt from screening. This is a reduction of over 90 percent.

The new threshold in constant Canadian dollars protects us from the effects of inflation. Other provisions of screening are detailed in the statement.

Let me now turn briefly to the matter of performance requirements which are placed on the U.S. investor at the time an investment is reviewed by Investment Canada.

These performance requirements were a very disturbing element for U.S. investors and often involved changes in product line and location of production. In many instances they were costly to the U.S. investor, but that cost was grudgingly accepted by U.S. investors as a hidden cost of doing business in Canada.

Under the Free Trade Agreement we made significant progress in reducing or eliminating the use of performance requirements, such as export performance requirements, local content, local sourcing and import substitution requirements.

In addition, one has to remember that because far fewer transactions will be subject to screening, a large body of performance requirements ipso facto will be eliminated.

NATIONAL TREATMENT

As to national treatment, by the provisions of the agreement the United States and Canada agree not to adopt any new discriminatory measures with respect to each other's investors. This national treatment provision is extremely important. It means that each party is to treat investors of the other party at least as favorably as its own investors in like circumstances.

We are particularly pleased with this comprehensive national treatment provision. It assures that investments and investors can respond to market forces and that U.S. and Canadian investors can compete on virtually the same terms free from discriminatory government actions. In today's day and age we need more of this type of liberalization and strengthening of market forces, not less.

There are some exceptions. Certain measures are excluded from the agreement. In general, existing measures are grandfathered, such as U.S. laws restricting foreign investment in atomic energy and communications, and the Canadian laws restricting foreign investments in communications and energy.

While grandfathered measures remain in force, they cannot be made more restrictive. And if any liberalization measures occur in these grandfathered sectors in the future, that new level of liberalized measure cannot be made more restrictive as well.

Senator DIXON. I wonder if you could conclude. We are having time difficulties.

Mr. CANNER. In fact, I just wanted to conclude by saying that the cultural industries are exempt from the agreement.

That concludes my oral statement.

[The complete prepared statement of Mr. Canner follows:]

To summarize the Canadian commitments, U.S. commercial banks, securities firms, insurance companies, and other financial institutions will be granted significantly better treatment that will allow them to compete more effectively in Canada with domestic firms.

U.S. Commitments

Under the agreement, the U.S. also made a number of specific commitments. First, the U.S. agreed to guarantee the right of Canadian banks to retain their multi-state branches in the United States that were grandfathered under the International Banking Act of 1978.

Second, if the Glass-Steagall Act is amended, we committed to extend the same benefits we grant our own firms to Canadian financial institutions in the United States.

Third, in an effort to be responsive to reasonable Canadian concerns regarding the treatment of U.S. subsidiaries of Canadian banks and securities firms which merge in Canada, the U.S. agreed to allow Canadian banks, as well as U.S. and other foreign banks, in the United States to underwrite and deal in debt obligations guaranteed by the Government of Canada, or its political subdivisions. This is a new measure for U.S., Canadian and other foreign banks that is consistent with the existing ability of banks to deal in securities of the U.S. Government or its political subdivisions.

Commitments by Both Countries

In addition to these specific measures, the United States and Canada both made an important commitment to continue liberalizing our markets and extending the liberalization to firms of the other party after the Free Trade Agreement goes into effect, contingent upon the other party fulfilling its commitment to liberalize. We have established a formal consultative mechanism between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee this liberalization and to resolve disputes arising from commitments already concluded in the Financial Services Part of the Free Trade Agreement.

Dispute Settlement for Financial Services

The Financial Services Chapter is excluded from the overall FTA dispute settlement mechanism. In its place, we created a consultative mechanism between the U.S. Treasury and the Canadian Department of Finance to serve both as the vehicle for resolving disputes and for seeking further liberalizations. We felt that a different mechanism from that in the overall FTA was necessary in the financial services area. In our view, financial services are fundamentally different from most other services and from the tradeable goods sector because prudential and regulatory concerns

play such an important role. Accordingly, we tried to tailor a consultation and dispute settlement mechanism that reflected the different and special nature of the financial services sector.

I would be happy to answer any questions at this time.

Thank you very much.

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Testimony of Stephen J. Canner
Director, Office of International Investment
U.S. Department of the Treasury
before the
Senate Committee on Banking, Housing and Urban Affairs
Washington, D.C.
May 20, 1988

Investment in the U.S.-Canada Free Trade Agreement

Thank you, Mr. Chairman.

I am pleased to be here today to discuss with you and other members of this Committee the investment provisions of the U.S.-Canada Free Trade Agreement. The Agreement dramatically reduces barriers and establishes rules of conduct for a broad range of economic activities. When implemented, it will provide greater opportunities for U.S. traders and investors, higher paying jobs for producers, and lower priced but higher quality goods for consumers. By opening our markets, our economies will prosper and our goods will become more competitive internationally.

We are especially pleased with this Free Trade Agreement in that it is the first of its kind to include provisions governing investment in the two countries. This is an historic breakthrough which will benefit us in our bilateral economic relations with Canada and serve to strengthen our efforts in the Uruguay Round of trade negotiations in the GATT to reduce and eliminate distortions to trade arising from host country investment policies.

Let me share with you our thinking as we approached the task of negotiating an Investment chapter.

WHAT WE FACED

We and the Canadians brought very different perspectives to the negotiating table. The United States has for two centuries maintained an open investment policy. That policy has meant capital flows to the United States, and with it increased employment, more efficient production, and better and less expensive products for the consumer. Our open investment policy has meant that, over the past five years, foreigners have made about $20 billion of equity investments annually. Cumulative foreign investment in the U.S. rose from $108 to $209 billion from 1981 to 1986 -- a significant figure but still a small percentage of our total investment and still less than the $260 billion which U.S. investors have placed abroad.

President Reagan indeed reaffirmed the importance of an open investment climate in his investment policy statement of September 3, 1983. In my own experience as the Director of the Office of International Investment in the Treasury, I can tell you that this policy has worked. I know of no "downside" risks of foreign investment which cannot be adequately taken care of under existing laws.

The Canadians brought a very different viewpoint to the bargaining table. In the 1970's -- for nationalistic and political reasons -- Canada decided to adopt a restrictive policy toward foreign investment, and to screen foreign investment under the auspices of the Foreign Investment Review Agency. Bureaucrats would second-guess the market and would decide which investments would be admitted, which would be blocked, and which would be admitted on condition that the investor fulfilled various performance requirements. And the Trudeau Administration added even more restrictive policies, such as the discriminatory and expropriatory provisions of the National Energy Program (NEP).

The market told Canada what it thought of these and other restrictive, inward-looking economic policies. In large part due to FIRA, net foreign direct investment into Canada declined from an annual average of C$684 million in 1970-75 to C$372 million in 1976-80. Promulgation of the NEP in 1980 compounded the disincentives, and in fact triggered disinvestment (i.e., net outflows of foreign direct investment) of C$1.275 billion per year on average from 1981 to 1985.

A study conducted by the Conference Board of Canada in 1984 further revealed the negative impact of the government's policies. Some 33 companies (11 percent of the survey sample) stated that they had been deterred from investing in Canada because of foreign investment controls. And one-half of the respondents indicated that their perceptions of the screening process worsened while their applications were under consideration. They cited a number of reasons, the most important of which were delays, perceived rigidity of the format, lack of transparency, and alleged unreasonable demands and political interference.

Since being elected in late 1984, the Mulroney Administration has taken steps to liberalize Canada's economic and foreign investment laws and policies. From the outset, it ceased blocking foreign investments. In 1985, the Mulroney Administration replaced FIRA with a new agency, Investment Canada, that is formally charged with promoting foreign investment. Foreign investors making greenfield investments and smaller acquisitions no longer require official approval. Rather, they need only to notify the authorities of their intention to invest. The Mulroney Administration also systematically dismantled most of the NEP. At least partly in response to these significant shifts in policy, net foreign

investment rebounded sharply, to C$1.6 billion in 1986 and a record C$4.3 billion in 1987. After further liberalization in connection with the FTA, Canada will retain the right to review only very large direct acquisitions by U.S. investors and investments of a particularly sensitive nature in the cultural and energy sectors.

WHAT OUR OBJECTIVES WERE

Our investment objectives in the FTA therefore were first, to prevent any backsliding by the Canadians and second, to build upon the liberalization already effected by the Mulroney Administration. We wanted to push the Canadians as far as we could to liberalize their standards, policies, and laws regarding foreign investment. We obviously did not achieve as much as we would have liked....nor for that matter did the Canadians, who resisted further liberalization mightily. But we achieved a substantial and important -- even critical -- measure of success which will significantly benefit the citizens and workers of both Canada and the United States.

WHAT WE GOT

Each side agreed to a standstill on existing restrictions that would treat foreigners worse than domestic investors. Simply put, this means that neither side will adopt more restrictive discriminatory laws, rules, and regulations regarding existing investments in each of our countries. One aspect of this is to freeze in the current Canadian practice of not screening new greenfield investments. This commits Canada to maintain its "hands off" policy with respect to greenfield investment.

Since the screening provisions for takeovers and acquisitions constitute a significant portion of the investment chapter, I would like to address those provisions in detail.

Screening of Foreign Investment

The agreement limits greatly the screening and blocking of direct acquisitions by U.S. investors. Specifically, Canada agrees that, after a phase-in period, the asset threshold for screening direct acquisitions will rise from the existing level of $5 million (Canadian, current dollars) to $150 million (Canadian, constant dollars). For a country that was screening greenfield investments and virtually all takeovers just three years ago, Canada has taken a giant, step forward. When fully phased-in, this liberalization means that direct takeovers of only about the 600 largest firms in Canada will be subject to screening. Viewed alternatively, the higher threshold removes U.S. direct takeovers of some 6900 Canadian firms from screening; this is a reduction of over 90 percent from the universe of Canadian firms whose direct acquisition is currently screened.

It is important to note that, while the existing threshold for screening of takeovers is denominated in current Canadian dollars, the new threshold will be denominated in constant Canadian dollars. This means that we do not accept a decreasing level of threshold imposed upon us over time by the eroding effects of inflation.

Most of the attention in the press has focused on the screening liberalization for takeovers by U.S. firms. Yet there is another equally important aspect regarding sales of Canadian subsidiaries by U.S. parents. Under existing law, if a U.S. parent were to sell its subsidiary to another foreign firm, that foreign firm would be subject to the screening and blocking authority of Investment Canada if the subsidiary were larger than existing thresholds (C$5 million for direct and C$50 million for indirect takeovers). Under the FTA, the higher screening thresholds will apply to direct and indirect sales by U.S. firms of their Canadian subs. This provides fairness and symmetry for our investors on both the buying and selling side of the takeover transactions.

The provisions for indirect takeovers also merit attention. An indirect takeover occurs when a U.S. firm, firm "A", acquires another U.S. firm, firm "B", and firm "B" has a Canadian subsidiary. Under existing law, the indirect acquisition of the Canadian subsidiary would be screened if the subsidiary's assets exceeded $50 million (Canadian current dollars). By the terms of the agreement, there will be no screening -- or blocking -- of the indirect acquisition of the Canadian company after a three year phase-out.

Performance Requirements

Let me now turn to the matter of performance requirements, which are placed on the U.S. (or other foreign) investor at the time an investment is reviewed by Investment Canada. These performance requirements have consisted of commitments to export a certain amount of production, to acquire a certain portion of inputs from the local market, to produce products that substitute for imports in the local market, etc. The list has been fairly long and imaginative. These performance requirements were a very disturbing element for U.S. investors, often involving changes in product line and location of production. We have been told that, in many instances, they were costly to the U.S. investor, but that the cost was grudgingly accepted by U.S. investors as a hidden cost of doing business in Canada.

Under the FTA, we made significant progress in reducing or eliminating the use of performance requirements. First, Canada (and the U.S.) agree not to impose export, local content, local sourcing, or import-substitution performance requirements on each other's investors. Second, both countries will refrain from placing such requirements on third country investors when any

significant impact on U.S.-Canadian trade could result. The operative word here is could; it is not necessary for our side to prove injury in the classic trade sense. A reasonable charge by us that a performance requirement on a third country trade could have a significant impact on bilateral trade is sufficient to make our case. Third, all performance requirements on those transactions not subject to screening by Investment Canada at the new, higher threshold, will ipso facto be eliminated.

Given the estimate that all indirect acquisitions and sales and direct acquisitions and sales of some 6900 firms will be taken out of the screening net when the agreement is fully phased-in, and that no greenfield investments will ever be screened, the overall burden of performance requirements on the U.S. economy is drastically reduced by the provisions of the FTA. We are proud of this accomplishment.

National Treatment

By the provisions of the agreement, the U.S. and Canada agree not to adopt any new discriminatory measures, with respect to each other's investors, restricting the establishment of new businesses; the acquisition of existing businesses; and the conduct, operation and sale of businesses after establishment. This "national treatment" provision is extremely important. In economic and legal parlance, it means that each party is to treat investors of the other party at least as favorably as its own investors in like circumstances with respect to the establishment of new businesses and the acquisition of existing businesses and with respect to the conduct, operation, and sale of business enterprises located in its territory. The FTA gives concrete meaning to this principle in two areas that have been problematic in the past. It provides that neither party can force divestiture by reason of the investor's nationality or establish minimum equity requirements for nationals of the host country.

We were particularly pleased with this comprehensive national treatment provision. It assures that investment and investors can respond to market forces, and that U.S. and Canadian investors can compete on the same terms free from discriminatory government action. In today's day and age, we need more of this type of liberalizing and strengthening of market forces, not less.

Other Provisions

There are numerous other provisions which go a long way towards enhancing the flow of investment and commerce between the two countries. Regarding expropriation, we agreed that expropriation can only be taken in accordance with international law standards. Those standards provide for, inter alia, payment of prompt, adequate and effective compensation at the fair market value of the expropriated properties. There are also provisions prohibiting either party from preventing an investor from transferring profits, earnings from an investment, or sales and liquidation proceeds (with only limited exceptions relating, for example, to limitations on dividend payments set by bankruptcy laws).

EXCEPTIONS

Certain measures are excluded from the agreement. In general, existing measures are grandfathered, such as U.S. laws restricting foreign investment in atomic energy and communications and the Canadian laws restricting foreign investment in communications.

While these and other grandfathered measures remain in force, they cannot be made more restrictive. And if any liberalization measures occur in these grandfathered sectors in the future, that new level of liberalized measures cannot then be made more restrictive. We thus have built in an upward "ratchet" for liberalization of existing grandfathered measures both here and in Canada.

The cultural industries in Canada were exempted from the FTA as a whole, including the investment chapter. However, the Agreement greatly alleviates a key problem for U.S. investors: it commits Canada, when an indirect acquisition occurs and Canada wants to Canadianize the Canadian cultural subsidiary involved, to fully indemnify the acquiring U.S. parent firm by outright GOC purchase of the subsidiary at a fair international market price independently and impartially determined. This is significant in that it removes a long-standing irritant of U.S. investors who recently acquired cultural industries through indirect acquisitions. This irritant pressured U.S. investors to sell at less than market prices. Should this occur in the future, the U.S. parent will no longer face this pressure; he can be assured of a market price for his asset.

RECIPROCITY

At this point, Mr. Chairman, I would like to address head-on the question of reciprocity. Some have suggested that, because Canada can block any direct acquisitions over the threshold level by a U.S. firm, the United States should be able to block comparable direct acquisitions of a U.S. company by a Canadian firm. To put it more bluntly, some have suggested that, if Canada retains the rights to keep a "restrictive" investment climate, we should retain comparable rights to have a "restrictive" climate.

That approach, in my view, is contrary to our national interests. We have had an open investment climate for two centuries, and it has worked for us. Canada, on the other hand, has learned first-hand the costs of a restrictive investment climate, and, recognizing those costs, has moved quickly to liberalization, even if it has not gotten to the point of total liberalization.

It simply does not make sense to abandon an open investment climate -- which has helped stimulate economic growth in the U.S. -- because a treaty partner has chosen, for nationalistic reasons, to sacrifice some of the benefits of foreign investment flows.

That concludes my formal statement. I would be happy to answer any of your questions.

Senator DIXON. Thank you, Mr. Canner.

We have Senator D'Amato and Senator Gramm here. I wonder if either of them has a statement they would like to place in the record.

OPENING REMARKS OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I want to thank you so very much and commend you for calling these hearings.

As you know, our State, a great part of it, our northern tier, shares a common border with Canada. We are pleased with the direction we are moving in. The freedom of movement on the border, the breaking down of barriers.

Mr. Chairman, I could go on for a long time, but I would ask that my statement be included in the record as if read in its entirety.

Let me commend you for calling these hearings. Unfortunately, my schedule precludes me from further participation. But I hope that I would be permitted to extend my good wishes to all of those who are participating.

Senator DIXON. Your statement will be reproduced in full.

[The complete prepared statement of Senator D'Amato follows:]

STATEMENT OF SENATOR ALFONSE D'AMATO
SENATE BANKING COMMITTEE HEARING
U.S./CANADA FREE TRADE AGREEMENT

MR. CHAIRMAN, I WILL BE BRIEF. I WOULD FIRST LIKE TO STATE HOW GLAD I AM THAT WE ARE HAVING THIS HEARING THIS MORNING. I COME FROM A STATE THAT SHARES A LONG AND OPEN BORDER WITH CANADA. THE PROSPECTIVE FREE TRADE PACT HAS GENERATED MUCH INTEREST AND ANTICIPATION ON BOTH SIDES OF THAT BORDER. WHILE NOT EVERY AFFECTED INDUSTRY IN NEW YORK IS HELPED AS MUCH AS IT WOULD LIKE TO BE, AND I HAVE SOME CONCERNS THAT REMAIN TO BE ADDRESSED, THOSE MATTERS ARE NOT WITHIN THE JURISDICTION OF THIS COMMITTEE. IN GENERAL, I THINK IT'S SAFE TO SAY THAT NEW YORKERS LOOK FORWARD TO A VAST INCREASE IN COMMERCIAL ACTIVITY MUCH TO THE BENEFIT OF THOSE ON BOTH SIDES OF THE LINE.

AS TO THE MATTERS THAT ARE WITHIN THIS COMMITTEE'S JURISDICTION, I AM PARTICULARLY GRATIFIED TO SEE THAT MOST BARRIERS TO CROSS BORDER INVESTMENT AND FINANCIAL SERVICES ARE REDUCED OR REMOVED. MR. CHAIRMAN, IT'S OBVIOUS THAT THIS IS TO EVERYONE'S BENEFIT. IN PARTICULAR, THE PHASING OUT OF MINIMUM DOMESTIC EQUITY HOLDINGS AND FORCED DIVESTITURE REQUIREMENTS IS WELCOME AND LONG OVERDUE. SUCH RESTRICTIONS ARE INAPPROPRIATE BETWEEN NEIGHBORS AND FRIENDS.

FURTHER, THE IMPLEMENTATION OF NATIONAL TREATMENT AND NONDISCRIMINATION STANDARDS, FREE TRANSFER AND THE ELIMINATION OF FOREIGN INVESTOR PERFORMANCE REQUIREMENTS, ARE ALL HEALTHY STEPS, IN THIS SENATOR'S VIEW, TO HELP ELIMINATE FACTORS THAT ONLY DISTORT TRADE AN OUR DOMESTIC MARKETS.

IT IS TOO BAD THAT THE SO-CALLED "CULTURAL INDUSTRIES," SUCH AS COMMUNICATIONS, ARE EXCLUDED FROM THESE REFORMS, BUT AT LEAST (AS I UNDERSTAND IT) THE PACT WILL REQUIRE THAT THOSE MEASURES MAY NOT BE MADE MORE RESTRICTIVE.

I ALSO SUPPORT THE ENERGY EXPORT PROVISIONS OF THE PACT.

MR. CHAIRMAN, I WOULD CONCLUDE BY SAYING ONLY THAT WE IN NEW YORK AND IN THE UNITED STATES DO NOT FEAR CANADIAN COMPETITION; WE WELCOME THE OPPORTUNITY TO SHARE ACCESS TO FINANCIAL MARKETS AND PRODUCTS; AND WE WELCOME COMPETITION FROM THOSE WHO WILL TRADE WITH US FREELY & FAIRLY.

THANK YOU, MR. CHAIRMAN.

Senator DIXON. Senator Gramm.

OPENING REMARKS OF SENATOR GRAMM

Senator GRAMM. I am happy to be here.

I support the Canadian Free Trade Agreement. It is seldom that we get an opportunity to look history right in the face, and I believe that this is a critically important agreement that will create the largest free trade area in the world.

Quite frankly, I am hoping that we are going to follow it up with a similar agreement with Mexico, and I would like to see that extend into Central and South America. In fact, I think it is a vision worthy of the American Nation that we might dream that someday there would be a free trade area from the Arctic to the Antarctic in the Americas.

That is a long way away. But 20 years ago people would have thought that the action that we are debating today was impossible. It shows the triumph of ideas, and I am absolutely delighted that we are on the verge of doing it and that I look forward to being in this committee to cast the first affirmative vote and be on the floor, hopefully, to see us go over the top.

Senator DIXON. I thank the Senators from New York and Texas for those fine remarks. I also have statements from Senators Sanford and Heinz to be inserted in the record.

OPENING STATEMENT OF SENATOR TERRY SANFORD

HEARING ON THE U.S./CANADA FREE TRADE AGREEMENT

MAY 20, 1988

Mr. Chairman, I thank you for calling for this hearing and thank our distinguished panel of witnesses for their helpful testimony and for the long, hard work to produce this historic agreement.

I would agree with many of our witnesses that this treaty represents a tremendous opportunity for this country and for our neighbors in Canada. With all of the trade problems we encounter with Japan and the European Community, our strong trade relationship with Canada is often ignored. But it is because Canada is our major trading partner that this is such an important and far reaching treaty.

I was pleased that services generally, and financial services in particular, were included as part of the agreement. I hope that our ability to reach agreement with Canada on financial services bodes well for progress in negotiations over services with other nations as part of the ongoing talks over the General Agreement on Tariffs and Trade (GATT). I also am confident that the fair treatment provided

to both Canadian and U.S. financial service industries by this treaty will serve both countries well.

While I was disappointed to see the Canadian government announce efforts to begin a duty remission program to aid its textile and apparel industry after the agreement was already completed, I think the U.S./Canada Free Trade Agreement is generally an excellent agreement that will open doors to new trade efforts and alliances between the U.S. and Canada.

I look forward to hearing in more detail this morning how the financial services and the Alaskan oil portions of the agreement are expected to work.

Thank you.

5/20/88

STATEMENT OF SENATOR HEINZ

Mr. Chairman, I wish to express my strong support for the sections of the Canadian Free Trade Agreement that fall within the jurisdiction of the Banking Committee. As a result of these provisions, the United States would gain --

* nondiscriminatory access to Canadian energy supplies and markets;

* more liberal treatment of U.S. investments in Canada; and

* more liberal access to the Canadian market for financial services

These are very significant achievements; and in return, we are asked to make only two very minor, noncontroversial changes in U.S. law.

Although these matters are part of a much larger and very complex proposal, if the entire Agreement could be judged on these proposals, it would have to be considered a lopsided victory for U.S. negotiators.

Looking at the required U.S. legislative changes, the trade bill that Congress recently sent to the President already includes language to permit sale of 50,000 barrels per day of Alaska North Slope oil to Canada as required by the Agreement. The other required change to permit banks in the United States to deal in debt obligations of the Canadian Government and its political subdivisions is a very modest proposal and has aroused no opposition.

I look forward to the comments of our witnesses and urge the support of my colleagues for these provisions.

Senator DIXON. Mr. Merkin, before you arrived, I had stated to the other witnesses that we have a time constraint here. At 11:30 we are going to begin five roll calls back to back on the INF Treaty that will preclude any further continuation of this hearing. If you can keep your remarks to about 5 minutes, it would be greatly appreciated.

STATEMENT OF WILLIAM MERKIN, DEPUTY ASSISTANT U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. MERKIN. Mr. Chairman, I would like to submit for the record my statement, a summary of the agreement, a list of companies that have come out in support of the agreement as well as a copy of a resolution of endorsement by the National Governors' Association.

During the negotiations I served as the deputy chief negotiator to the chief negotiator, Peter Murphy. I would like to focus on the agreement as a whole.

The agreement we have concluded with Canada, we believe, is the most comprehensive bilateral agreement ever negotiated. It is very complex and comprehensive.

TARIFFS ELIMINATED

Under the agreement, all tariffs between the United States and Canada will be eliminated. That in itself is historic. From the U.S. perspective we think that is very important because on average Canadian tariffs are twice as high as U.S. tariffs. As the tariffs are eliminated over a 10-year period, we will see the higher tariffs come down to our level and will finally reach zero by the year 1998.

For the first time, this agreement contains a bilateral agreement between the United States and Canada which establishes rules for bilateral trade in services.

We have Mr. Brant Free with us, at the end of the table, from the Commerce Department, who was involved in those negotiations, to answer any questions in that area.

This is important not just because of trade in services from the United States and Canada standpoint, but it provides a first step in efforts to formulate multilateral rules for services at the GATT Uruguay round.

As you have also heard this morning, we concluded the first bilateral agreement with any other country covering the financial services sector.

We are also establishing much freer and more secure trade in energy. The agreement calls for nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States.

Of particular interest to this committee is the provision in the energy chapter which will allow Canada access to a maximum of 50,000 barrels per day of Alaskan oil currently restricted from export under section 7(d) of the Export Administration Act, provided it is exported from Alaska on U.S. bottoms.

I have to my right Bob Reinstein, who served as our chief negotiator of the energy portion of the agreement, to answer questions that you may have on that chapter or that provision.

Also, for the first time, as you heard from Steve Canner, we have agreed to rules governing bilateral investment activities between the United States and Canada. There are also provisions covering automotive trade, agriculture, alcoholic beverages, customs matters, government procurement, product standards, personnel movement among many other areas.

So, as I said, it is an extremely comprehensive agreement.

REDUCE AND MINIMIZE FRICTION AND DISTORTIONS

Let me be quite candid. Despite all we did accomplish, it is not a panacea for every ill that faces us. It will reduce, but not end, trade frictions. It will minimize, but not eliminate, trade distortions.

However, we believe this agreement is a vast improvement over the prevailing situation. For those that criticize the agreement for not solving all of our problems, I would urge that we focus our interests and the question on both sides of the border on whether this agreement will make our country a better and more prosperous place a year from now, a decade from now, or a half-century from now. We believe an objective answer to that question will be a resounding yes.

Mr. Chairman, that concludes my formal remarks, and of course we will be pleased to answer any questions you may have.

[The complete prepared statement of Mr. Merkin follows:]

TESTIMONY OF

WILLIAM S. MERKIN

DEPUTY ASSISTANT U.S. TRADE REPRESENTATIVE FOR CANADA

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MAY 20, 1988

Thank you for the opportunity to testify before you today on the U.S.-Canada Free Trade Agreement. I would like to focus my remarks on the Agreement as a whole, while representatives from the Department of the Treasury will discuss in more detail the financial services provisions which are of particular interest to this Committee.

The formal signing of the Free Trade Agreement on January 2 by President Reagan and Prime Minister Mulroney culminated almost two years of complex, and sometimes difficult negotiations. It is all too easy, especially in politics, to use hyperbole. But it is no exaggeration to say that this is a truly historic document.

Trade between the United States and Canada too often is taken for granted. Our trade problems with Japan and the European Community are so much in the spotlight that most Americans still don't realize Canada is our biggest trading partner. Yet over $150 billion in goods and services cross our common border annually. With $60 billion in U.S. exports in 1987, Canada is our largest and

fastest growing export market.

These negotiations were characterized by hard bargaining and difficult compromises. Many will seek to identify winners and losers, but that approach is too narrow. This is a win-win Agreement. It should result in increased economic activity, higher trade levels, more jobs, and enhanced competitiveness for both the United States and Canada. The people of both countries will benefit from this Agreement, through lower prices and greater consumer choice.

The U.S.-Canada Free Trade Agreement is the most comprehensive bilateral trade agreement ever negotiated. As the world's largest trading partners we are constructing the world's largest shared market. We have submitted to the Committee today an extensive summary of the Agreement. Therefore, in my formal statement I will only highlight its main provisions.

Under the Agreement, we have eliminated all tariffs between the United States and Canada, without exceptions. Since Canadian tariffs are, on average, twice as high as comparable U.S. rates, total tariff elimination will provide significant benefits for the U.S. exporter.

For the first time since services became a major international commercial issue, two major trading partners have negotiated an

agreement establishing rules for bilateral trade in services. These rules will cover scores of service sectors, such as construction, telecommunications network-based enhanced services and computer services, architecture, accounting, tourism, insurance and engineering. Not only is this important for U.S.-Canada services trade, but it provides a concrete first step for our efforts to formulate multilateral rules for services at the GATT Uruguay Round. We also concluded the first bilateral agreement with any other country covering the financial services sector.

We are establishing much freer and more secure trade in energy. The Agreement calls for nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States. Energy prices will be determined by markets, not by governments. This means that the Canadian Government will not be able to impose higher prices on us than they charge Canadians. Cheaper and more secure energy supplies will make U.S. industries more competitive, both in North America and throughout the world.

Of particular interest to this Committee is the provision in the energy chapter which will allow Canada access to a maximum of 50 thousand barrels per day of Alaskan oil currently restricted from export under Section 7(d) of the Export Administration Act, provided it is exported from Alaska on U.S. bottoms. This provision responds to two Canadian interests: (1) reciprocity in

access to each other's energy supplies in general, and (2) alternate crude oil supplies for British Columbia refineries. Regarding the first objective, the energy chapter of the FTA is intended to enhance the energy security of both countries by reducing barriers to bilateral energy trade and assuring the most efficient development and disposition of North American energy supplies. The net result should be increased supplies of secure energy at lower costs for consumers in both countries. Given that Canada is our largest foreign supplier of petroleum, natural gas, electricity and uranium, granting Canada access to Alaskan oil in exchange for long-term secure access to Canadian energy exports is clearly a net plus for U.S. energy security and U.S. consumers, and is fully consistent with the objectives of the Export Administration Act as it relates to exports of Alaskan oil.

Regarding the second Canadian objective of providing an alternate secure source of crude oil for refineries in British Columbia, we estimated that this objective could be met by providing access to up to 50 thousand barrels per day of Alaskan oil. Current refining capacity in British Columbia is about 167 thousand barrels per day, according to the most recent Oil and Gas Journal survey. Actual utilization is less, perhaps 140 to 150 thousand barrels per day. Existing supply relationships and, more particularly, technical constraints considerably limit how much Alaskan oil might actually be used by these refineries. Our estimate was 35 to 50 thousand barrels per day at most. Further,

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current limitations on shipping facilities in the Vancouver area would seem to require transshipment of any Alaskan oil through existing facilities in Washington State. Thus, the provision in the FTA in Annex 902.5 regarding Alaskan oil exports basically describes what might be expected to happen in any case, even if no conditions had been placed on either volumes or transportation.

Also for the first time, the United States and Canada have agreed to rules governing bilateral investment activities. The Agreement reduces the screening of U.S. investment in Canada, and moves Canada towards a more open, market-oriented investment environment.

There are also provisions covering automotive trade, agriculture, alcoholic beverages, customs matters, government procurement, product standards, personnel movement, and many other areas. These are all described in detail in the summary we submitted to the Committee today.

The proposed Agreement spans many sectors of our economies. Numerous U.S. industries and groups have already voiced strong support. Nonetheless, we recognize that, despite widespread enthusiasm for this Agreement, some may disagree. For some, there may be too much free trade in this Free Trade Agreement. Some special interests will see themselves as vulnerable to increased competition in a free trade area. Others may be timid, afraid to try a creative approach to the future, fearful of the

unknown, thinking that no change means no risk. Yet in this dynamic, interdependent world of ours, the future inevitably holds risks, and the status quo is never sustainable. To do nothing is to retrogress.

Then there are those who are disappointed because they wanted more and wanted it now. Unfortunately, some entered these negotiations with unrealistic expectations that the negotiations would cure all their ills. This Agreement is not a panacea for every ill. It will reduce, but not end, trade frictions. It will minimize, but not eliminate, trade distortions. There never has been, and likely never will be, perfectly free trade between any two independent sovereign countries. This Agreement was never intended to solve all our bilateral trade problems and should not be expected to do so. By establishing dispute resolution and consultation mechanisms, the agreement explicitly recognizes this fact. It is a vast improvement over the prevailing situation, and a bold step toward significantly freer trade between our countries. It is a massive advancement over the status quo.

Failure to implement this Agreement would have serious repercussions for both countries. The United States and Canada would clearly miss out on a once-in-a-century opportunity. We would be deprived of the enormous economic gains which will come from this Agreement as well as the intangible benefits of developing an even closer relationship with our friendly neighbors to the north.

We would also lose the impetus it gives to the new GATT round. If the United States and Canada -- the two largest trading partners in the world, next door neighbors, the closest of friends and allies -- cannot liberalize their trading relationship, what hope do we have of success in Geneva?

The question on both sides of the border should be: "Will this Agreement make my country a better and more prosperous place to live a decade or a half century from now?" The objective answer to that question will be a resounding yes!

We must keep our eyes squarely on the long-range benefits for each nation as a whole. This Agreement will help both Americans and Canadians enter the 21st century more competitive and better prepared for the future.

We should approve this Agreement and then build on it in the future. It will, without doubt, be the most significant bilateral trade agreement either country has ever negotiated.

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National Governors' Association

John H. Sununu
Governor of New Hampshire
Chairman

Raymond C. Scheppach
Executive Director

H-7. U.S. - CANADIAN TRADE

The Governors support implementation of the Free Trade Agreement negotiated by the federal governments of the United States and Canada. Our support is contingent upon Canada and the U.S. doing nothing in the interim to violate the spirit of the explicit understanding affirmed in writing on January 2, 1988 to "exercise their discretion in the period prior to entry into force of the accord so as not to jeopardize the approval process or undermine the spirit and benefits of the Free Trade Agreement."

The agreement, while not fully addressing all issues relating to our bilateral trade, is expected to contribute to real growth in the economies of both signatories. It represents a positive step toward the open, competitive world trading system that we have endorsed. It provides for more timely and effective resolution of disputes between the two largest trading partners in the world.

Throughout the negotiations, the Office of the U.S. Trade Representative has sought our advice and made it a priority to keep us informed on progress. As the related legislation is developed and debated, we will continue to consult with the administration and Congress regarding its impact on state economies.

Emphasizing the importance of U.S. - Canadian relations, we will continue our meetings with the Canadian Premiers on issues of mutual interest, including options for greater trade cooperation between our two countries.

We believe that efforts should continue to be made to resolve those issues not fully addressed during the negotiations and that remaining inconsistencies with the General Agreement on Tariffs and Trade (GATT) rules should be vigorously pursued. We will work with Congress and the administration and within our states to minimize any adverse effects of the agreement.

The Governors have significant concerns about issues created or not fully resolved by the agreement and ask to be consulted as the implementing legislation or other measures are developed to ameliorate these problems.

The administration should enter into additional negotiations to address inequities regarding subsidies. Fair and open trade for all businesses requires resolution of the reality or perception of unequal treatment of certain industries due to differing national policies on subsidies.

Adopted February 1988.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

SUMMARY OF

THE U.S.-CANADA FREE TRADE AGREEMENT

February 1988

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THE WHITE HOUSE

Office of the Press Secretary
(Palm Springs, California)

January 2, 1988

STATEMENT BY THE PRESIDENT

I am pleased to announce that Prime Minister Mulroney and I have today entered into an agreement to establish a free trade arrangement between the United States and Canada.

In the truest sense, this is an historic agreement for both sides. We will strengthen what is already a deep friendship between our people by enhancing economic opportunities and creating jobs in both countries. Moreover, the agreement firmly establishes that the trade environment between the two countries will in the future be founded on the principle of free and open trade.

This comprehensive agreement will benefit many sectors of the U.S. economy. Canadian and American tariffs will be phased out completely, saving consumers hundreds of millions of dollars while also improving our export opportunities. It will secure access to Canada's market for American manufacturing, agriculture, financial services, and high technology; improve national security through energy sharing; and provide important investment opportunities. Canada will benefit from the agreement in many of these same ways; the pact is truly reciprocal. As the agreement goes into effect, Canada's access to our large domestic market will grow, and Canadian industrial centers will gain opportunities to develop even more important roles in the economy of North America.

The agreement to establish a free trade area has important international implications as well. It will encourage supporters of free trade throughout the world by demonstrating that governments can remove trade barriers even in the face of protectionist pressures. We hope that the U.S.-Canada example will help set the tone for the Uruguay Round multilateral trade negotiations.

Our negotiations with the Canadian government leading to this agreement incorporated advice from Congress, industry, agriculture, and labor. Our Congress, as well as the Canadian Parliament, will review the agreement fully over the next several months. As this process begins, both sides should be mindful that the decisions they make will help shape the relationship between our

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countries in the years to come, and will send a signal to the rest of the world.

The creation of the world's largest free trade area will be a mark of leadership and presents an historic opportunity to the United States and Canada. We must not let this opportunity slip from our grasp.

# # #

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 2, 1988

FACT SHEET

U.S.-CANADA FREE TRADE AGREEMENT

The United States and Canada have entered into a free trade agreement that, if approved and implemented, will take effect on January 1, 1989. The agreement will:

- Eliminate all tariffs on bilateral goods trade within 10 years of implementation;
- Reduce nontariff trade barriers;
- Establish principles for the conduct of bilateral trade in services;
- Establish rules for the conduct of bilateral investment;
- Resolve many outstanding bilateral trade issues;
- Enhance the energy and national security of the two countries;
- Facilitate business travel; and
- Establish a timely bilateral dispute settlement mechanism.

Economic Implications

Each year the U.S. and Canada exchange more goods and services than any two countries in the world. Bilateral trade in goods and services exceeded $150 billion in 1986.

The elimination of tariffs and most other barriers to trade between the two countries will increase economic growth, lower prices, expand employment and enhance the competitiveness of both countries in the world marketplace.

Chronology of the Negotiation

- In March 1985, President Reagan and Prime Minister Mulroney asked their trade officials to explore ways to reduce and

eliminate existing barriers to trade between the U.S. and Canada.

- On September 26, 1985, Prime Minister Mulroney formally requested that the U.S. and Canada examine the potential for negotiating a comprehensive free trade agreement.
- On December 10, 1985, President Reagan notified the Congress of his intent to enter into bilateral negotiations with Canada using "fast track" procedures.
- On June 17, 1986, U.S. and Canadian negotiators on the free trade area met for the first time in Ottawa.
- On October 3, 1987, President Reagan notified Congress of his intent to enter into a free trade agreement with Canada.
- On December 9, 1987, U.S. and Canadian negotiators initialled a final text of the agreement.
- On January 2, 1988, President Reagan and Prime Minister Mulroney signed the final text of the agreement.

The Fast Track

Section 102 of the Trade Act of 1974 authorizes the President to enter into bilateral free trade agreements and to have the Congress approve them on a "fast track" basis. Section 102 authority expires at midnight on January 2, 1988.

In order for a bilateral agreement to qualify for fast track consideration, several conditions must be met:

- The negotiation must be requested by the foreign country;
- The President must notify the House Ways and Means and Senate Finance Committees of the negotiations, giving them 60 legislative days advance notice;
- The President must notify the Congress of his intent to enter into an agreement 90 days before doing so.

After entering into an agreement, the President must submit it to Congress, along with a draft implementing bill, a statement of any administrative action proposed to implement the agreement, an explanation of how the bill or statement changes or affects existing law and a statement of reasons why the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate.

The implementing bill is introduced in both Houses of Congress on the day it is submitted and is referred to the committees of jurisdiction. House committees have 45 days in which the House is in session to report the bill; they are discharged automatically from further consideration after that period. The House votes within 15 days in session after the measure has been received from the House committees.

After receiving the bill from the House, the Senate committees have 15 days in which the Senate is in session to report the bill; they are discharged automatically from further consideration after that period. The Senate votes within 15 days in session after the measure has been received from the Senate committees.

Amendments to the bill are not in order. A simple majority of each House is required for approval.

# # #

BRIEF SUMMARY OF KEY FTA PROVISIONS

- **Tariffs:** Eliminates all tariffs on U.S. and Canadian goods by 1998.
- **Rule of origin:** Uses a rule of origin to prevent third country goods from receiving FTA tariff treatment.
- **Customs:** Ends customs user fees for goods and duty drawback programs by 1994 for bilateral trade and duty waivers linked to performance requirements by 1998 (except for the Auto Pact).
- **Quotas:** Eliminates import and export quotas unless allowed by the GATT or grandfathered by the FTA.
- **National treatment:** Reaffirms GATT principle preventing discrimination against imported goods.
- **Standards:** Prohibits use of product standards as a trade barrier and provides for national treatment of testing labs and certification bodies.
- **Agriculture:** Eliminates all bilateral tariffs and export subsidies and limits or eliminates quantitative restrictions on some products, including meat. Eliminates Canadian import licenses for wheat, oats and barley when U.S. crop price supports are equal or less than those in Canada.
- **Wine and Distilled Spirits:** Removes most discriminatory practices against wine or spirits imported from the other country.
- **Energy:** Prohibits most import and export restrictions on energy goods, including minimum export prices. Requires any export quotas used to enforce short supply or conservation measures to share resources proportionately. Provides for Alaskan oil exports of up to 50,000 barrels per day to Canada.
- **Autos:** Replaces and Canadian content rule for duty-free Auto Pact imports into the U.S. with tougher FTA content rule. (Most auto trade already is duty-free under the U.S.-Canada Auto Pact.) Does not change rules for Auto Pact-qualified companies importing duty-free into Canada, but does not allow new companies to qualify. Permits U.S. auto and parts exports that meet the FTA rule to enter Canada at FTA tariff rates, which phase out over 10 years. Ends all Canadian duty remission programs for autos by 1998.
- **Emergency action:** Allows temporary import restrictions to protect domestic industries harmed by imports from the other country in limited circumstances.

- Government procurement: Expands the size of government procurement markets that will be open to suppliers from the other country.

- Services: Commits governments not to discriminate against covered service providers of the other country when making future laws or regulations. (Exempts transportation services.)

- Temporary Visas: Facilitates travel for business visitors, investors, traders, professionals and executives transferred intra-company.

- Investment: Provides national treatment for establishment, acquisition, sale and conduct and operation of businesses. (Exempts transportation.) Commits Canada to end review of indirect acquisitions and to raise to C$150 million (in constant 1992 Canadian dollars) the threshold for review of direct acquisitions. Bans imposition of most investment performance requirements.

- Financial Services: Exempts U.S. bank subsidiaries in Canada from Canada's 16 percent ceiling on assets of foreign banks. Ends Canada's foreign ownership restriction on U.S. purchases of shares in federally regulated insurance and trust companies. Reviews U.S. firms' applications for entry into Canadian financial markets on the same basis as Canadian firms' applications. Permits banks in the U.S. to underwrite and deal in debt securities fully backed by the Government of Canada or political subdivisions. Guarantees continuation of multi-state branches of Canadian banks.

- General dispute settlement (except for financial services and countervailing duty and antidumping duty cases): Establishes a binational commission to resolve disagreements.

- CVD/AD dispute settlement (for countervailing and antidumping duties): Allows countries to continue to apply existing national laws. Replaces court review with a binational panel (when requested), which must apply national law in rendering decisions under international law.

- Softwood lumber: Preserves the 1986 agreement with Canada on provincial pricing practices.

- Culture: Exempts cultural industries from the FTA, but authorizes measures of equivalent commercial effect in response to actions otherwise inconsistent with the FTA.

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SUMMARY OF THE AGREEMENT

Preamble

The Preamble to the Agreement describes the two countries' desire to improve their economies, to achieve full employment and increase living standards and to strengthen the competitiveness of both countries' firms in the global marketplace.

PART ONE: OBJECTIVES AND SCOPE

The first part includes chapters setting out the objectives and scope of the Agreement and defining key terms.

Chapter One: Objectives and Scope

The Agreement establishes a free trade area (FTA) consistent with the General Agreement on Tariffs and Trade (GATT), the multilateral agreement governing trade relations between 94 countries.

The objectives of the Agreement are to:

- eliminate barriers to trade in goods and services between the two countries;

- facilitate conditions of fair competition;

- significantly liberalize conditions for investment;

- establish effective procedures to administer the Agreement and resolve disputes;

- and lay the foundation for further bilateral and multilateral cooperation.

The federal governments agree to ensure that state, provincial and local governments take necessary actions in areas under their jurisdiction to implement the Agreement. They establish that the Agreement generally will take precedence over pre-existing agreements, except where specified, and they agree to treat each other's goods, services and investment as they treat their own to the extent provided in the Agreement.

Chapter Two: General Definitions

Words critical to the application of the Agreement are defined.

PART TWO: TRADE IN GOODS

Chapters three through twelve deal with trade in goods, building on the GATT and other agreements. Chapters three through six, eleven and twelve apply to all trade in goods. Chapters seven through ten apply to individual sectors.

Chapter Three: Rules of Origin for Goods

The Agreement will eliminate all tariffs between the U.S. and Canada, but each country will maintain its own tariffs on imports from other countries. Because of the disparities between U.S. and Canadian tariff levels, it is necessary to prevent imports from third countries from being shipped through one FTA partner into the other in order to escape the higher tariff.

Rules of origin are used to define those goods entitled to duty free treatment. Goods wholly produced in either the U.S. or Canada will qualify for FTA treatment. Goods containing imported inputs will qualify if they are processed enough to result in one of several specified changes in tariff classification under the internationally agreed Harmonized System; that is, they must be changed in ways that are physically and commercially significant. In some cases, there is the explicit requirement that at least half of the cost of manufacturing the goods must be attributable to Canadian and/or American materials and/or direct costs of processing. Finally, there is a safeguard provision denying FTA treatment to any goods altered merely to circumvent the rules of origin.

Goods that are further processed in a third country before being shipped to their final destination will not qualify for FTA treatment. For example, goods produced by either U.S.- or Canadian-owned maquiladora operations in Mexico will not qualify.

Apparel made from fabric woven in the U.S. or Canada will be duty-free but apparel made from imported fabric will qualify for FTA treatment only up to the following levels:

	Non-Woolen Apparel	Woolen Apparel
	(in million-square-yard equivalent)	
Imports from Canada	50	6
Imports from the U.S.	10.5	1.1

Non-woolen fabric and made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country, will qualify for FTA treatment for three years, but only up to an annual level of 30 million square yards.

The two governments will consult regularly to ensure that the rules of origin are operating effectively and to consider changes to the rules where experience suggests changes may be helpful.

Chapter Four: Border Measures

The central element of a free trade area is the elimination of substantially all tariff and nontariff trade barriers.

Tariffs

All bilateral tariffs will be eliminated in stages by January 1, 1998. The removal of tariffs will increase two-way trade and lower costs to consumers in both countries, thereby creating a single U.S.-Canadian market of 265 million people. Approximately 75 percent of bilateral merchandise trade, currently in excess of $120 billion, already moves free of duty. The remaining 25 percent, however, is subject to tariffs. Canadian tariffs average about 9-10 percent, or about twice the U.S. average of approximately 4-5 percent.

The results of the tariff negotiation are expressed in terms of the new Harmonized System (HS) of tariff nomenclature. (If either country fails to adopt the HS, duties will be eliminated by converting the schedule of reductions back to current tariff schedules.) All dutiable products in the HS were assigned to one of the following three staging categories: (1) immediate elimination; (2) five equal, annual cuts (20 percent per year), and (3) ten equal, annual cuts (10 percent per year). In almost all instances, staging on a particular product is the same in both countries. The stages for various commodities were selected in recognition of the fact that industries in both countries will require varying periods of adjustment to changing competitive conditions.

Import-sensitive industries on both sides of the border were generally accorded 10-year staging, which would result in the duty being eliminated by January 1, 1998. These include plastics, rubber, most wood products, lead, zinc, base metal articles, footwear, textiles and apparel, steel, many alcoholic beverages, consumer appliances, precision instruments, watches and most agricultural and fish products.

Immediate duty elimination is scheduled for such products as automatic data processing and related equipment, certain telecommunications equipment, motorcycles, whiskey and rum, some processed fish, raw hides, leather and furs.

All other duties will be phased out by January 1, 1993. Included within this category are paper, furniture, printed

matter, chemicals, after-market automotive parts, precious jewelry, most machines, some musical instruments, and petroleum.

The Agreement provides that tariffs can be reduced faster whenever the two governments agree.

Customs Programs and Procedures

The Agreement eliminates duty drawback for bilateral trade, duty waivers linked to performance requirements (except as provided in the chapter on automotive trade), and the U.S. customs user fee for Canadian merchandise. It authorizes importers and exporters to certify that goods meet the rules set out in the rules of origin chapter and are therefore eligible for FTA tariff treatment. These measures are intended to prevent imports from third countries from benefiting from the FTA.

Duty Drawback: Both countries will end duty drawback on exports to the other as of January 1, 1994, with limited exceptions. Most countries, including the United States and Canada, have duty drawback programs, which provide for the return of duties on imports when they or substituted domestic goods are incorporated in goods subsequently exported. Because of the elimination of bilateral tariffs, continuation of duty drawback between the two parties would allow duty free-entry of third-country imports through the other FTA party and would distort trade and investment decisions.

As an exception to the ban on duty drawback for bilateral trade, the following goods will continue to benefit from the program:

- goods remaining in the same condition on exportation as on importation (but they would not benefit from FTA tariff treatment),
- dutiable goods of the United States or Canada if they are incorporated into, or directly consumed in, the production of goods subsequently exported back to the FTA partner, and
- goods where both parties agree to maintain duty drawback (this category consists of (1) imported citrus products and (2) fabric imported from a third country and made into apparel that is subject to the most-favored-nation (MFN) tariff when exported to the other party).

Also, beginning January 1, 1994, goods withdrawn from a Foreign Trade Zone (FTZ) or benefiting from a similar program will be treated the same whether destined for consumption in the U.S. or Canada. For a good made in a U.S. FTZ, duty must be paid on the value of any foreign components at either the component or

the finished-good tariff rate. Maintaining the full benefits of these programs, like duty drawback programs, would have allowed imports from third countries to enter duty-free through the other FTA party and would distort trade and investment.

Duty Waiver: Neither party will introduce new duty waivers or expand existing ones linked to performance requirements after the later of June 30, 1988 or the date of Congressional approval of the Agreement. Existing programs will be eliminated by January 1, 1998. This provision ends the trade-distorting practice of requiring a firm to buy local inputs or to export output in exchange for a tariff exemption.

The 1998 termination date excludes certain waivers affecting automotive trade, as specified in the section on automotive trade. The countries reserve existing rights under other agreements with respect to the Auto Pact or comparable arrangements. This provision maintains the U.S. right to challenge Canadian performance requirements under GATT rules.

If a party can show that a duty waiver to a specific firm granted on a commercial good hurts its commercial interests, then the party granting this waiver must either make it generally available to any importer or end the program. This provision prevents discrimination among firms.

Customs Fees: Starting on January 1, 1990, the U.S. must cut by 20 percent each year the customs user fee on goods qualifying under the rule of origin of the FTA. The fee on Canadian goods will be eliminated as of January 1, 1994. Neither country may introduce new customs user fee programs to pay for the costs of Customs administration on goods from the other country.

Customs Procedures: The Agreement authorizes the governments to require importers to submit a written declaration of origin based on a written declaration of origin provided by the exporter. It requires each country to make it unlawful for the exporter to provide a false certification. False declarations by either the importer or the exporter could be prosecuted by the government of the country in which the offending business is located. This provision will help avoid fraudulent claims of FTA origin to avoid tariffs.

The Agreement also provides for cooperation on enforcement, consultations on uniform application of the rule of origin, review and appeal procedures for decisions on the rule of origin and consultations on major changes affecting customs administration.

Import and Export Restrictions

Import and export quotas and other restrictions can distort trade flows. The elimination of such barriers is essential to an

effective free trade area. Unless specifically grandfathered by the Agreement or allowed by the GATT, existing quantitative restrictions will be eliminated immediately or according to a timetable. Some specified restrictions that have been exempt from GATT obligations will be eliminated for trade between the U.S. and Canada.

In all cases where quantitative restrictions are prohibited under the Agreement, use of minimum export prices and minimum import prices (except those used to enforce countervailing duty and antidumping orders) also are prohibited.

Where either country prohibits imports from a third country, it may similarly prohibit the pass-through of imports from that country through the FTA partner. This provision preserves the right to enforce embargoes for foreign policy or other reasons (e.g., embargoes against Cuba or Iran).

Export taxes will not be permitted under the Agreement unless the tax is also levied on goods destined for domestic consumption. In addition, where GATT-permitted export restrictions are applied (such as in the event of a short-supply emergency), the restriction must not reduce the proportion of the good that was exported to the FTA partner relative to the total supply of the good prior to the restriction.

Chapter Five: National Treatment

The Agreement incorporates the GATT requirement that, once imported into either country from the other, goods will not be the object of discrimination. This ensures that the elimination of border measures will not simply be replaced by internal measures favoring domestic goods over imports. This rules out higher sales or excise taxes or regulatory requirements on imports. Discrimination against goods from the other country by provinces or states is prohibited even if a province or a state discriminates against goods from other provinces or states.

Chapter Six: Technical Barriers

There are legitimate public policy objectives for which technical regulations and standards are maintained (e.g., to protect human, animal or plant life or health; to preserve the environment; and to protect essential security interests). However, standards measures may work to inhibit trade.

The Agreement builds on current obligations under the GATT Standards Code not to use standards to hinder trade unnecessarily. Certification and testing facilities will receive nondiscriminatory treatment in both countries. We also agree to work to harmonize

our standards where appropriate so that similar products do not have to be made or work in different ways in order to be sold in the other country. Provisions of this chapter do not apply to agricultural goods, which are covered in the chapter on agriculture.

These provisions do not mean that the U.S. will have to adopt the metric system or Canadian standards, or that standards cannot be adopted for legitimate regulatory reasons. The basic rule remains that standards must not create unnecessary obstacles to trade. Obstacles to trade are not created where the demonstrable purpose of standards-related measures is to protect health and safety, environmental, national security and consumer interests. However, such measures must not operate to exclude goods of the other country if they meet these objectives.

Both countries will assure that testing facilities and certification bodies are treated in a nondiscriminatory manner. This paves the way for the recognition by Canadian authorities of U.S. facilities and bodies. This does not require that all testing labs receive accreditation, especially if an individual lab is not qualified in the view of the accrediting authority, but forbids the discrimination against labs on the basis of nationality.

Canada and the United States agree to harmonize (make compatible) federal standards-related measures to the greatest extent possible, and to promote harmonization of private standards. The Agreement does not require that standards and technical regulations be harmonized but provides for it where appropriate. State and private standards-setting bodies are not obligated under any of these provisions.

Both countries will provide for enhanced transparency in the regulatory process. To this end, we will expand our information exchange and guarantee a 60-day comment period on proposed standards-related regulations at all levels. This is important to manufacturers because they need to know about regulatory changes which may affect their products so that they can prepare for the changes, and have some say in them. Similar provisions will apply for state, provincial, and private standards activities at a "best efforts" level.

Processes and production methods are included as standards-related measures subject to the provisions of the Agreement. This provision makes clear that specifying how a product is made is just as much a standards-related measure, and subject to the rules of this section, as specifying how the product should perform.

Both countries will recognize each other's systems for accrediting testing labs. Currently, this is a small program operated by the National Bureau of Standards in the U.S. and the

Canadian Standards Association in Canada to accredit testing labs. Labs accredited under one program will automatically receive recognition in the other country.

Chapter Seven: Agriculture

The U.S. and Canada agree that the achievement of our major trade objectives for our agricultural sectors will require multilateral solutions and accordingly will work together in the Uruguay Round and other fora to liberalize agricultural trade. Nevertheless, the FTA includes provisions providing U.S. and Canadian agricultural producers increased opportunities to market their products in the future with no tariff barriers and with fewer nontariff barriers.

Various barriers to trade in agriculture have arisen in recent years in an attempt to stabilize the agricultural economy. Quotas, import licenses, technical requirements and subsidies have all had a negative effect on trade in agricultural products. The Agreement provides for a number of liberalizing measures in an era of increasing protectionism.

The Agreement provides for semi-annual consultations between the U.S. and Canada on agricultural issues. It also provides that each country shall retain its rights and obligations under the GATT except as otherwise provided.

Tariffs

All agricultural tariffs between the U.S. and Canada will be eliminated within 10 years, thereby facilitating trade and leading to higher efficiency. The agricultural sectors likely to be most affected by the tariff elimination will be fresh fruits and vegetables because some of the highest agricultural tariffs are applied on those products.

Both countries will reserve the right, for 20 years, to apply a temporary duty on designated fresh fruits and vegetables to protect their domestic producers from import surges from the other country. This provision will facilitate a smooth transition to a tariff-free border for both countries, providing a mechanism to prevent unnecessary hardship to fruit and vegetable producers. The temporary duty can only be triggered if (1) the import price falls below 90 percent of the previous five-year average monthly import price for five consecutive days, and (2) the planted acreage in the importing country is not higher than the previous five-year average for the particular fruit or vegetable. The total duty applied under this provision cannot cause the total duty on these products to exceed the lesser of the most-favored-nation (MFN) duty that was in effect for the corresponding season prior to the Agreement or the then current MFN duty. Moreover,

it can be applied only once per year per product for no longer than 180 days. The temporary duty will be removed immediately once the import price exceeds 90 percent of the five-year average for five consecutive days.

Subsidies

The U.S. and Canada have agreed to work together to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade through multilateral negotiations such as the Uruguay Round. This is consistent with the U.S. proposal for agriculture in the Uruguay Round. The FTA partners have agreed not to use export subsidies on agricultural goods exported directly or indirectly to the other country. Each country has also agreed not to sell agricultural goods in the other country at a price below the acquisition price plus handling, storage and other costs. This will prevent the use of practices such as dual pricing. The Agreement will not limit other forms of production subsidies in either country.

Canada has agreed to exclude from the transport rates established under the Western Grain Transportation Act (WGTA) agricultural goods originating in Canada and shipped via West Coast ports for consumption in the U.S. These subsidies were instituted by Canada in 1984 as an expansion of the Crow's Nest Act. It is anticipated that this will primarily affect shipments of millfeed and rapeseed meal into the U.S. Pacific Northwest. The Agreement will not affect WGTA subsidies on shipments through Eastern ports (Thunder Bay), which are not conditioned on export and have been in place since 1897.

These provisions do not prevent imposition of antidumping or countervailing duties.

Access Issues

Grains: Canada has agreed to eliminate import licenses for U.S. wheat, barley, oats and their products when U.S. government support for the particular crop is equal to or less than that of Canada. Each country will calculate its own support level in accordance with a methodology set forth in the Agreement. There is a mechanism to resolve any disagreement over the other country's calculation. When it occurs, the elimination of licenses will provide greater access for the U.S. to the Canadian market for both grains and processed products containing grains.

The Agreement will not affect the ability of either country to legislate changes in domestic support programs for agricultural products. Both countries have also reserved the right to impose or reimpose import restrictions on particular grains if imports increase significantly as a result of a substantial change in either country's support programs for that grain.

Meat: In evidence of the spirit of free trade, the two countries will exempt each other from import quotas applied under their respective meat import laws, unless those imports are frustrating import restrictions on meat imports from other countries. This is a further step ensuring access to each other's markets. This provision will not allow the transshipment or substitution of meat from third countries to circumvent the respective meat import laws. Direct third country access to the U.S. for meat will remain unchanged by the Agreement.

Poultry and Eggs: Canada has agreed to increase the base level for its import quotas for eggs, chicken, turkey and products thereof to a level reflecting total shipments over the last five years. This provision will increase the amount of guaranteed access into Canada. As a result of the tariff reductions, U.S. exporters should have a competitive advantage over other potential supplying countries for the increased quotas.

Sugar: The U.S. has agreed not to impose import restrictions on products from Canada containing ten percent or less sugar for purposes of restricting the sugar content of those products. This provision will not limit the ability of the U.S. to restrict the entry of processed products with higher than ten percent sugar content for purposes of protecting the sugar program.

Technical Regulations

The U.S. and Canada have agreed to work together to harmonize, to the greatest extent possible, technical regulations affecting agricultural, food, beverage and certain related goods. These provisions will facilitate trade for both countries by eliminating, where possible, technical requirements that can amount to non-tariff trade barriers. Specific schedules address the following areas: feeds; fertilizers; seeds; animal health; veterinary drugs; plant health; pesticides; food, beverage and color additives; packaging and labeling; meat, poultry and egg inspection; dairy, fruit and vegetable inspection, and unavoidable contaminants in food and beverages.

Chapter Eight: Wine and Distilled Spirits

Export opportunities for U.S. producers of alcoholic beverages have been limited by measures in Canada that discriminate against the internal sale and distribution of imported products in Canada. The Agreement does not prohibit the regulation of alcoholic beverages in either country, but does eliminate the most significant existing discriminatory practices in Canada and prohibit discrimination against the products of the other country for all new regulations.

Listing measures (limits on brands or types of products that may be sold) must no longer discriminate against wine or distilled spirits of the other country. The lone exception to this requirement is that the province of British Columbia may continue to grant automatic listing to certain estate wineries, provided that listing measures do not otherwise discriminate. Criteria for decisions on listings must be based on normal commercial considerations and listing measures cannot be used to create disguised trade restrictions. Further, listing measures must include procedures for a fair a expeditious appeal when an application for a listing is denied.

The Agreement requires the elimination of discriminatory pricing measures for wine and distilled spirits, including charging a higher markup for U.S. products than locally produced products. Any existing markups must be eliminated when the Agreement is implemented for distilled spirits and must be phased out by January 1, 1995 for wine (with half of the differential to be eliminated by January 1, 1990). Differential pricing measures may only be maintained if the differential between products of the two countries does not exceed the additional cost of service for imported products relative to domestic products. Any such cost of service differential will be subject to audit to ensure it reflects actual higher costs rather than arbitrary protection for local products.

The Agreement prohibits discrimination between Canadian and U.S. wine and distilled spirits in terms of the distribution system for these products. However, on-premise sales by a winery or distillery solely for items produced by them may continue. Private wine store outlets existing on October 4, 1987 in Ontario and British Columbia may continue to discriminate in favor of wine produced in those provinces, but distribution measures in those provinces must otherwise provide nondiscriminatory treatment. Quebec is also allowed to continue to require that wine sold in grocery stores must be bottled in Quebec, as long as alternative outlets for U.S.-bottled wine are provided.

Canada has also agreed to eliminate any measures which require that distilled spirits imported in bulk must be blended with Canadian spirits in order to be sold in Canada.

Canada will recognize Bourbon Whiskey as a distinct product manufactured in the United States and the United States will recognize Canadian Whiskey as a distinctive product of Canada.

Tariffs

Tariffs on whiskey and rum will be eliminated when the Agreement takes effect. Tariffs on other distilled spirits, wine and beer will be phased out in ten equal annual amounts so that duty free status will be obtained on January 1, 1998.

Chapter Nine: Energy

Energy is the single most important input for a developed economy. Without it, there could be no basic industries such as chemicals, steel and other primary metals, autos, aviation, and pulp and paper. All of these industries require energy as a key input and some also manufacture products whose use depends on the availability of energy. Thus, assuring secure supplies of energy at stable and reasonable prices is an essential priority of U.S. economic and trade policy.

The U.S. is the world's largest energy consumer. Although we are also one of the leading producers of energy, the requirements of our economy for various forms of energy are so great that we must import significant amounts of energy to meet these needs. Canada is by far our largest energy supplier. We import more crude oil and petroleum products from Canada than from Saudi Arabia, Venezuela or Mexico. Canada supplies almost all of our natural gas and electricity imports, and more than two-thirds of our uranium imports. In addition, Canada is our largest coal export market. The U.S. and Canada share the world's largest bilateral energy trade relationship, with two-way trade of $10 billion per year or more.

Regrettably, the history of this trade has been marked by a considerable degree of government intervention on both sides, in the form of export restrictions, minimum export price requirements, import fees and quotas, and various other trade restrictions. There have also been domestic programs in each country which have distorted trade both in energy itself and in energy-intensive products such as petrochemicals. While these past actions have often been in response to short-term concerns, they have generally worked to the longer-term disadvantage of both countries. At times, artificially low prices have stimulated excess demand while suppressing supply and thus causing shortages. At other times, artificially high prices have stifled economic activity throughout the economy, especially in energy-intensive industries. Overall, the uncertainty about future government energy trade policies and actions has inhibited investment in energy production and energy consuming industries in both countries.

The Agreement builds on the lessons learned from the past by renouncing excessive government interference in our future energy trade and provides a framework for rational economic development of that trade. Because it will encourage the most efficient system for production, distribution and use of energy between the two countries, it will enhance the energy security of both countries. It should also result in lower overall energy costs over the longer term, which will contribute significantly to the international competitiveness of basic industries in each country.

The energy goods covered by the Agreement include petroleum,

natural gas, coal, electricity, uranium and other nuclear fuels.

The Agreement reaffirms the rights and obligations of both the United States and Canada with respect to the GATT prohibitions on import and export restrictions. Moreover, it makes explicit that both countries interpret the GATT to prohibit minimum export price requirements. In addition, the Agreement extends the GATT discipline to cover a prohibition on export taxes.

In an annex, the Agreement lists three specific changes to conform existing laws to these commitments: (1) The U.S. will exempt Canada from any potential restrictions on enrichment of foreign uranium which might be imposed under Section 161v of the Atomic Energy Act; (2) Canada will exempt the U.S. from its export restrictions on unprocessed uranium; and (3) the U.S. will allow Canada access to a maximum of 50 thousand barrels per day of Alaskan oil currently restricted from export under Section 7(d) of the Export Administration Act, subject to the condition that this oil will be transported to Canada from a suitable location in the Lower 48 States.

The Agreement affirms that, as provided by the GATT, either country may restrict exports where necessary to respond to supply shortages, to maintain a domestic price stabilization program or to prevent exhaustion of a finite energy resource. However, it may impose a restriction only if the restriction (1) does not reduce the proportion of total supply historically available to the other country; (2) does not disrupt the normal channels of supply or mix of energy products; and (3) does not impose a higher price on exports than for comparable domestic sales. What this means is that neither country will treat the buyers or sellers of energy of the other country as "second-class" customers or suppliers. Canada gains assured market access for its energy exports to the U.S., and the U.S. gains assured access to Canadian supplies for its imported energy requirements.

The Agreement provides for consultation in the event either country believes the energy regulatory actions of the other country would directly discriminate against its energy goods or businesses.

An annex to the Agreement lists regulatory changes to be made to conform to the Agreement. Canada will eliminate its electricity export price test that requires the export price to be not significantly less than the least-cost alternative available to the importer. Other Canadian export tests (price tests and "surplus" tests) must be administered in a manner consistent with the principles of the Agreement.

The U.S. will eliminate any discriminatory treatment of British Columbia Hydro vis-a-vis comparably situated U.S. utilities in terms of access to the Bonneville Power Administration Intertie

into the California electricity market. In addition, it is expected that long-term arrangements will be negotiated to assure the development of electricity trade in a mutually beneficial manner consistent with the objectives and principles of the Agreement.

The Agreement recognizes the importance of government incentives for oil and gas resource development to the energy supply security of both countries and, therefore, allows such incentives to be maintained or created. This provision does not prevent the imposition of antidumping or countervailing duties.

The Agreement provides for only quite narrow exceptions to the prohibition on trade restrictions in situations involving national security; these are limited to situations of militarily related national security. The Agreement declares that there is no inconsistency between this Agreement and the obligations of either country under the International Energy Program of the International Energy Agency.

Chapter Ten: Trade in Automotive Goods

Automotive trade accounted for over one-third, or $46 billion, of the total bilateral trade between the U.S. and Canada in 1986. Under the U.S.-Canada Automotive Products Trade Agreement (Auto Pact) of 1965, 95 percent of bilateral automotive trade already moves duty-free. As a result of the FTA, all automotive trade will be duty-free, as long as it meets the rule of origin.

The U.S. and Canada have agreed to the removal of tariff and nontariff barriers and new origin rules designed to assure that the benefits of the FTA accrue to North American auto and auto parts producers. By removing trade and investment distorting practices, the FTA will encourage greater efficiency in motor vehicle production and will provide greater assurance that economic factors determine trade and investment choices between the U.S. and Canada.

Tariffs and Rule of Origin

All tariffs on U.S. and Canadian motor vehicles and parts will be eliminated by January 1, 1998. Most will be phased out over 10 years, but tariffs on aftermarket parts will be eliminated in five years.

The FTA rule of origin which is described in the chapter on rules of origin will apply to all U.S. imports of Canadian automotive products, but only to Canadian imports of U.S. automotive products not entering Canada under the Auto Pact. The FTA rule is based on change in Harmonized System tariff classification and includes a 50 percent U.S.-Canadian direct cost of manufacturing

test for vehicles and specified assembled parts.

Here is how the new FTA rules and the existing Auto Pact will work for imports of autos and parts into the U.S. from Canada:

> The FTA rule of origin will replace the rule currently used by the U.S. to implement the Auto Pact. Upon implementation of the FTA, those motor vehicles and original equipment parts currently eligible for duty-free entry under the Auto Pact will be able to enter the U.S. duty-free only if they meet the new FTA rule of origin. Other auto parts that meet the FTA rule of origin will pay the FTA tariff until it is fully eliminated. Motor vehicles and parts that do not meet the FTA rule of origin will pay the full current most-favored-nation (MFN) duty, not the FTA duty.
>
> The new rule of origin is tougher in that it requires that substantial manufacturing costs (materials and direct processing costs) be incurred in the U.S. and/or Canada, while the current test only assures that substantial costs (which can include advertising and overhead) or profits are incurred in the U.S. and/or Canada. This change will help both U.S. and Canadian auto parts manufacturers.

Here is how the new FTA rules and the existing Auto Pact will work for imports of autos and parts into Canada from the U.S.:

> Canada's criteria for duty-free access into Canada under the Auto Pact will not change. Qualified producers (those that meet Canada's performance requirements) will continue to be able to import motor vehicles and parts into Canada duty-free from anywhere in the world. However, it has been agreed in the FTA that no new firms may qualify for Auto Pact or Pact-like benefits in Canada, except for the General Motors-Suzuki (CAMI) joint venture, if it qualifies by the 1989 model year.
>
> For companies not meeting Canada's Auto Pact performance requirements, the FTA tariff will apply (until it is fully eliminated) to products imported from the U.S. that meet the FTA rule of origin. Motor vehicles and parts that do not meet the FTA rule of origin will pay the full current most-favored-nation (MFN) duty, not the FTA duty.

Duty Remission

Canada's export-based duty remission program will be eliminated January 1, 1989 on exports to the U.S. and terminated in all cases by January 1, 1998. The export-based duty remission program allows firms in Canada to reduce duties on motor vehicle and part imports in proportion to the Canadian value-added in

their exports of automotive parts.

Canada's production-based duty remissions will end by January 1, 1996 or earlier as contracts expire. Production-based duty remissions allow firms that are not members of the Auto Pact in Canada to avoid duties on automotive imports into Canada as long as they meet Canadian local content requirements.

There will be no new recipients of any Canadian automotive duty remission benefits, and current benefits will not be enhanced. U.S. and Canadian auto parts manufacturers will benefit from the elimination of these measures, which distort trade and investment.

Other Provisions

Canada will phase out its embargo on the importation of used vehicles over five years.

A Select Panel will be established to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets.

Chapter Eleven: Emergency Action

One of the basic tenets of the GATT trading system is that countries should be allowed to take temporary emergency actions restricting imports in order to remedy serious injury caused by increased imports. The drafters of the GATT recognized that a country would be more willing to enter into contractual obligations to reduce its trade barriers if it were able to reimpose the duties when and if imports of a particular product increased to such an extent as to cause injury to one of its industries producing a competing product. Both the U.S. and Canada have established "safeguard" procedures to provide emergency relief to domestic industries injured by imports.

The Agreement provides a two-track system aimed at preserving the existing rights of workers and firms in both countries to gain relief from import-related injury, while at the same time assuring the U.S. and Canadian business communities that the trade expansion created by the FTA will not be suddenly and arbitrarily cut back. Although the U.S. and Canada have not used such actions against each other very often, the possibility of taking actions reduces certainty of market access.

In the United States, domestic producers and workers will have access to relief under special revised provisions of Section 201 of the Trade Act of 1974.

Under the bilateral track, if imports resulting from FTA

duty reductions cause serious injury, the importing country may reinstate the pre-Agreement tariff or current MFN duty (whichever is lower), or suspend duty reductions. This can be done only once per product during the ten-year transition period for no longer than three years. After the transition period, such actions can only be taken by mutual agreement.

Under the global track, the FTA partners retain their GATT rights except that the importing country must exclude the other from an action involving other countries unless that country's imports are substantial and are found to be contributing importantly to the injury from imports. For purposes of this track, imports in the range of five percent to ten percent or less of total imports would normally not be considered substantial. "Contributing importantly" means an important cause, but not necessarily the most important cause.

If the exporting country is initially excluded from an import relief action, the importing country has the right to subsequently bring that country's trade under the import restraint action in the event of a surge in imports from that country. In no event may the exporting country's exports be cut back below the level they reached during a reasonable recent base period.

The FTA partner taking either a bilateral or global action must provide compensation aimed at expanding trade in another product or the exporting FTA partner may take a substantially equivalent retaliatory action.

Disputes arising after an action is taken are subject to binding arbitration under the dispute settlement provisions of the FTA.

Chapter Twelve: Exceptions for Trade in Goods

The Agreement incorporates the provisions of the GATT allowing for exceptions from GATT rules for limited reasons, such as to protect public health or morals or national treasures.

It also specifies certain miscellaneous exceptions from the FTA, including both countries' export controls on logs and existing East Coast Canadian export restrictions on unprocessed fish. Both countries' practices on the internal sale and distribution of beer are also exempted, but amendments to existing practices cannot deviate more from the obligations of the Agreement, and new measures must conform with the FTA.

GATT rights with respect to measures exempted from the FTA are expressly preserved.

PART THREE: GOVERNMENT PROCUREMENT

The general provisions regarding goods trade in Part Two do not apply to purchases of goods by governments.

Chapter Thirteen: Government Procurement

The Agreement expands the size of the government procurement markets which will be open to free and fair competition between U.S. and Canadian suppliers. It also establishes a solid framework for further elimination of "buy national" restrictions that presently inhibit sales by U.S. exporters to Canada.

The procedures used in the Agreement for government purchases build upon the open and competitive principles and procedures of the GATT Government Procurement Code. It improves Procurement Code procedures by establishing a common rule of origin, requiring an effective bid challenge system for all potential suppliers and improving transparency of bid selection, particularly for procurements which are single tendered. The U.S. currently provides for effective bid challenge procedures but Canada does not.

The U.S. and Canadian governments apply various buy national preferences in favor of suppliers of domestic goods. These preferences inhibit -- and in some cases prevent -- competition from foreign products. Under the Agreement, suppliers of goods which are manufactured in the U.S. and Canada and which contain at least 50 percent U.S. or Canadian content will be treated on an equal basis to suppliers of domestic goods for covered procurements.

"Buy American" and "Buy Canadian" restrictions are eliminated on the procurement of goods by U.S. and Canadian entities covered by the GATT Government Procurement Code between the Code threshold (for 1987, $171,000) and an FTA threshold of $25,000, and are subject to the same exclusions and exceptions as those covered by the Code.

Viewed in conjunction with the Procurement Code, the FTA will allow U.S. exporters to compete on a nondiscriminatory basis for all Code-covered procurements over $25,000.

The value of procurement opportunities covered by this chapter is estimated at approximately $3 billion of U.S. procurement and $500 million of Canadian procurement. Previously a majority of Canadian purchases were below the Code threshold, versus a small minority for U.S. entities. Therefore, Canadian entities will open a much higher percentage of procurements under the FTA than will U.S. entities. As a result of the new opportunities offered by Canadian entities under this chapter, procurement opportunities in Canada for U.S. exporters are increased by more

than 100 percent.

Principles are established for bid challenge procedures. These include a requirement that a reviewing authority with no substantial interest in the outcome of the procurement be responsible for deciding bid challenges. Suppliers may protest government procedures on their own initiative and receive timely settlement of complaints.

Each government must provide transparency in its procurement process. Public notice must be provided of all the criteria it intends to use in evaluating a bid (including offsets) and the award must be based on those criteria.

Within one year after the conclusion of the current multilateral negotiations on the GATT Procurement Code, there will be an opportunity to improve and expand coverage of this chapter by further negotiations with Canada.

PART FOUR: SERVICES, INVESTMENT AND TEMPORARY ENTRY

GATT rules cover trade in goods only. Services and investment are not covered. The FTA goes beyond traditional GATT areas to establish rules in these areas that break new ground and set an important precedent for the Uruguay Round of multilateral trade negotiations, in which GATT countries are considering whether to extend GATT disciplines to these new areas.

Chapter Fourteen: Services

The Agreement breaks new ground by providing rules governing trade and investment in services industries. Both the U.S. and Canada have relatively open markets for services. The Agreement will ensure continued openness by providing that future laws and regulations will not discriminate against services providers of the other country.

A wide range of services industry sectors are covered by the agreement, including: construction, tourism, insurance, telecommunications-network-based enhanced services and computer services, some professional services, services relating to mining and agriculture, wholesale and retail trade, management services and other business services. Transportation services are not covered.

Future U.S. and Canadian government measures such as laws, regulations or licensing requirements affecting services trade and investment must not have the purpose or effect of discriminating between the services providers of either country. The right of establishment, the right to sell across the border, and greater

transparency in regulations are also provided. The Agreement does not affect subsidies for or government procurement of services.

There are annexes which clarify the application of the services agreement to architecture, tourism, and telecommunications-network-based enhanced services and computer services.

In architecture, both sides will review the work of professional organizations to develop mutually acceptable standards.

In telecommunications-network-based enhanced services and computer services, the Agreement ensures the future development of an open and competitive market including access to and use of the basic telecommunications network.

In tourism, the Agreement ensures continued open markets for tourists and tourism service providers.

The Agreement provides the opportunity for future negotiations to increase liberalization, sectoral coverage and other obligations.

Chapter Fifteen: Temporary Entry for Business Persons

The U.S. and Canada have agreed that as a part of the special trading relationship established by the Agreement, it is desirable to facilitate temporary entry for business persons into the territory of each country on a reciprocal basis. The Agreement and immigration laws of both countries will provide transparent criteria and procedures for temporary entry of certain persons who conduct trade in goods and services as well as investment activities, while maintaining necessary provisions to ensure border security and protect indigenous labor and permanent employment. These provisions facilitate entry for citizens of each country into the territory of the other on both a short- and long-term basis depending on the type of commercial activity involved.

The two countries agree to provide temporary entry for business persons through transparent laws and regulations and to provide explanatory materials in order to enable business persons to become acquainted with such laws and regulations. These provisions will be applied in a manner that provides the desired entry without undue delay or impairment in the conduct of trade and investment under the Agreement.

The countries will exchange data on temporary entry and consult at least once a year concerning the operation of the Agreement and consider provisions that may further enhance temporary entry, including amendments and additions to coverage of persons under the Agreement.

Should a dispute arise concerning the provisions of this chapter, it may be referred to the dispute resolution provisions of the Agreement if the matter involves a pattern of practice and available administrative remedies have been exhausted.

Coverage of persons involves Business Visitors and Professionals who shall be admitted without prior approval procedures, petitions, labor certification tests, or other procedures having similar effect, as well as Intra-Company Transferees and Traders and Investors who will no longer face labor certification tests or other similar procedures.

Business Visitors

A business person engaged in one of the covered occupations and entering for the described purpose shall be granted entry under Schedule 1 of the Agreement. This schedule defines the persons involved in a number of business areas and the activities undertaken. The approach provides transparency and specificity to a number of areas of business activity that have in the past been unclear or subject to conflicting interpretation.

One important provision allows persons of either country to provide after-sales service for the length of the contract or warranty period on commercial or industrial machinery and equipment or computer software that has been purchased outside its territory. This allows firms to better provide after-sales service functions that are often a necessary component in the sale of complex machinery, equipment and computer software.

Traders and Investors

A business person seeking temporary entry in order to carry on substantial trade in goods or services in a capacity that involves supervisory, executive or essential skills, or to direct the operations of an enterprise in which the person has invested, shall be granted temporary entry under new, liberalized procedures in the Agreement. The new provisions provide business persons the assurance that after they have received an initial certification, they may freely enter as often as their business needs require.

Professionals

The FTA partners will admit persons who are members of certain professions and engaged in their related business activities. Coverage includes the generally recognized professions such as engineers, architects, and certain scientific and technical specialties. The Agreement also covers newer professions such as management consultants. Revised procedures should provide improved processing of entry requests.

Intra-Company Transferees

Intra-company transferees, when engaged in managerial or executive activities or possessing specialized knowledge, will be admitted. Requirements that certain companies train replacement personnel have been removed.

Chapter Sixteen: Investment

For U.S. investment in Canada, the Agreement builds on the substantial liberalization measures already taken by the present Canadian government. It freezes those measures in place and bars most new measures which would adversely affect U.S. investment.

For its part, the U.S. will continue its open investment climate for Canadian investors in accord with the basic principles set out in the President's Investment Policy Statement of September 9, 1983.

The Basic Rules

The Agreement sets out four basic rules to govern the treatment of investors from each country:

National Treatment and Non-discrimination: Each party is to treat investors of the other party at least as favorably as its own investors (in like circumstances) with respect to the establishment of new businesses and the acquisition of existing business, and with respect to the conduct, operation and sale of business enterprises located in its territory. Neither party, thus, can require that investors sell investments by reason of their nationality, or that their own nationals must hold a minimum level of equity in investments made by investors of the other country.

Elimination of Performance Requirements: Neither party, when permitting an investment in its territory, or when regulating an investment, may impose or enforce trade-distorting measures which require an investor to export a certain amount of goods, or substitute locally produced goods for imports, or buy or give a preference to locally produced goods. (This rule also applies to third country investors when such measures could significantly affect U.S.-Canadian trade.)

Expropriation Only in Accordance with International Law Standards: Neither party may directly or indirectly expropriate the holding of an investor from the other country except in accordance with generally accepted international law standards which, inter alia, require payment of prompt, adequate and effective compensation at the fair market value of the expropriated properties.

Free Transfer: Neither party may prevent an investor from transferring profits, earnings from an investment, or sales and liquidation proceeds (with only limited exceptions relating, for example, to limitations on dividend payments set by bankruptcy laws.)

Exceptions

Certain measures are excluded, notably those involving transportation services. The provision of financial services (except certain insurance measures) are covered elsewhere in the Agreement.

In general, existing measures are grandfathered, such as the existing U.S. laws restricting foreign investment in such fields as atomic energy and communications and the Canadian laws restricting foreign investment in communications. Those measures may not be made more restrictive.

The oil and gas and uranium mining industries were subject to published policies under the Investment Canada Act prior to October 3, 1987; the application of these policies and of the thresholds of the Agreement to these industries is to be clarified by an exchange of letters.

Liberalization of Entry and Exit Restrictions

The Agreement does achieve major liberalization of Canada's Investment Canada Act, which is Canada's principal mechanism for regulating investment into Canada and, a fortiori, sales of Canadian businesses to foreign investors.

Canada's threshold for review of direct acquisitions by U.S. investors is raised to C$150 million (in constant 1992 Canadian dollars) after three years from the date of entry into force of the FTA.

Canada will no longer review indirect acquisitions after the end of that three-year period.

Canada also will apply these higher thresholds to an acquisition by a foreign investor when a U.S. investor seeks to sell its Canadian business.

Canada will offer to buy, at a fair open market price (determined by independent assessment) any business enterprise in Canada in the cultural industry which Canada requires be divested when reviewing an indirect acquisition. If, for example, a U.S. firm seeks to buy another U.S. firm with a Canadian subsidiary in a cultural industry, Canada may require the new owner to divest the cultural subsidiary to a Canadian purchaser. (The FTA exempts cultural industries generally from the Agreement, and

therefore from the Chapter.)

Canada will no longer impose certain trade-distorting performance requirements under the Investment Canada Act. These are requirements to export, substitute local production for imports, source or purchase locally, or achieve specified domestic content.

PART FIVE: FINANCIAL SERVICES

Chapter Seventeen: Financial Services

This is the first U.S. bilateral agreement covering the entire financial sector. It removes essentially all existing discrimination faced by U.S. financial institutions operating in Canada, allows the flexibility to acquire Canadian financial services firms, improves access between our markets, and allows financial firms on both sides of the border to compete on a more equal basis. Canadian financial institutions will continue to enjoy the current treatment and open access they now receive in the U.S. financial market.

The Agreement covers all current and future laws, regulations, and practices relating to financial institutions in both countries. Financial institutions include commercial banks, investment banks, trust and loan companies, savings-and-loan institutions, certain activities of insurance companies, and other institutions so designated under the laws of each country. (Financial services offered by nonfinancial institutions and insurance services are covered elsewhere in the Agreement.)

The domestic assets of foreign bank subsidiaries operating in Canada (the "closely held" or Schedule B banks) are currently limited to 16 percent of all domestic assets of the Canadian banking system. Foreign bank subsidiaries also face individual capital limits and other restraints such as the sale of loans to the parent bank. Under this agreement, U.S. commercial bank subsidiaries will be exempt from the current restrictions on market share, asset growth, and capital expansion, in the same way that Canadian banks are free from these restraints. U.S. commercial banks will also be allowed to establish or acquire securities firms or federally-regulated Canadian insurance and trust companies, again in the same manner as Canadian banks.

Under the current proposals for financial market reform in Canada, foreign insurance companies have perhaps been the most disadvantaged because of the so-called "10/25" rule. This prevents a nonresident from acquiring more than 10 percent ownership of a Canadian insurance company, or trust and loan company; total nonresident ownership is limited to 25 percent. Under the

Agreement, U.S. insurance firms will now receive the same rights as Canadian insurance companies to diversify in the financial sector by establishing or acquiring federally-regulated insurance companies, trust companies, Schedule B banks, or securities firms.

While Ontario, Quebec, and other provinces have liberalized their securities markets and opened them to foreign investors, the federal government implemented a policy of reciprocity which has held up the applications for entry by U.S. securities firms and banks. Under the Agreement, these applications will be reviewed on a prudential basis, just as for Canadian firms, rather than on a reciprocity basis. U.S. securities firms established in Canada will have the ability to diversify through a holding company structure into other financial activities such as banking and insurance.

Under the Agreement, the U.S. also made a number of specific commitments, although there were no national treatment barriers in the United States to eliminate. The U.S. agreed to guarantee the right of Canadian banks to retain their multi-state branches that were grandfathered under the International Banking Act of 1978. If the Glass-Steagall Act, which separates commercial and investment banking in the U.S., is amended, the U.S. will extend these benefits to Canadian financial institutions in the U.S. Such guarantees have never before been extended to any other country.

The U.S. responded to Canadian concerns regarding the treatment of their banks and securities firms which merge in Canada, but have operations in the U.S., by agreeing to allow Canadian banks (as well as U.S. and other foreign banks) in the U.S. to underwrite and deal in debt obligations fully backed by Canada or its political subdivisions. This is a new power that is consistent with the existing ability of banks to underwrite and deal in securities of the U.S. Government and its political subdivisions, yet does not undermine the basic tenets of the Glass-Steagall Act.

The new power enables Canadian firms to take advantage of liberalization in Canada, while retaining the most important securities activities in the U.S. One of the side effects of this new power will be a direct benefit to the Canadian federal government, the Agent Crown corporations, the provincial governments, and the municipal governments in Canada. Since, as a result of the agreement, their debt will be underwritten and traded by more firms in the U.S., it offers the potential for a wider, deeper market and, therefore, lower borrowing costs.

In addition to these specific commitments, both the U.S. and Canada have made general commitments. The U.S. has agreed to continue the current treatment provided to Canadian financial

institutions established in the U.S. as long as Canada continues to liberalize its financial markets and to extend the benefits to U.S. financial institutions established in Canada. Canada has made an analogous commitment. The Agreement establishes a formal consultative mechanism between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee this liberalization and deal with any other financial services issues.

PART SIX: INSTITUTIONAL PROVISIONS

This part establishes procedures for general dispute settlement and the special arrangements for antidumping and countervailing duties.

Chapter Eighteen: Institutional Provisions

The Agreement provides for a consultative mechanism to avoid disputes and resolve any disagreements quickly and easily, with provisions for use of binational panels of independent experts for unresolved disputes.

The Canada-United States Trade Commission is established to supervise the implementation of the Agreement and to resolve disputes on all matters except financial services, antidumping and countervailing duties. The Commission will be composed of Cabinet-level representatives of both governments and will operate by consensus.

Either government may request consultations and will attempt to avoid or resolve disputes through consultations. If consultations are unsuccessful, either government may request a meeting of the Commission. The Commission may use a mediator or draw on expert advice in seeking a bilateral settlement. If not resolved in this manner, the Commission may agree to refer the matter to binding arbitration or a panel can be established at the request of either party.

A panel will be appointed from a roster maintained by the Commission. Two panelists will be appointed by each government and a fifth, the chairman, will be jointly agreed, selected by the other four, or chosen by lot. The panel, after hearing the arguments of both sides, will report its findings and recommendations to the Commission. If either side believes the panel has erred, it may present written objections to the panel, which may reconsider and revise its final report.

After receiving the panel's final report, the Commission will agree on the resolution of the dispute, whenever possible removing the nonconforming measure rather than paying compensation. If the Commission cannot agree and a government believes its

fundamental rights or benefits under the FTA are being impaired, that government may withdraw equivalent benefits from the other.

Chapter Nineteen: Binational Dispute Settlement in Antidumping and Countervailing Duty Cases:

The U.S.and Canada will continue to apply their own national antidumping (AD) and countervailing duty (CVD) laws to goods imported from the other country. In such cases, independent binational panels acting in place of national courts will expeditiously review final AD and CVD determinations to decide whether they are consistent with the AD or CVD law of the country that made the determination.

The panel procedure -- combining independent review and judicial standards with an FTA-created forum and a tight schedule -- will allow quick resolution of AD/CVD issues between the two countries without unnecessary bilateral trade friction, yet preserve the rights of injured companies to obtain relief from unfair trade practices. The panel mechanism will remain in place for up to seven years, while a bilateral working group attempts to develop new approaches to unfair pricing and government subsidies that would ensure effective discipline over unfair trade practices and minimize unfair trade disputes within the new free trade area.

Under the FTA's panel procedure, independent binational panels will review final AD and CVD determinations by the relevant administrative agencies of the U.S. and Canada. In one FTA country's AD or CVD case involving a product from the other FTA country, panels would substitute for national courts unless, in a particular case, no party preferred panel to court review. Panel decisions would be binding as a matter of international law with respect to the particular matter reviewed. This system of review would apply to final determinations made by an administrative agency after the date of entry into force of the Agreement. It will not affect either country's judicial review of AD/CVD cases concerning imports from third countries.

In the U.S., the Department of Commerce makes final dumping or subsidy determinations in AD/CVD investigations and reviews of AD/CVD orders, and the U.S. International Trade Commission makes final determinations in AD/CVD investigations as to whether a U.S. industry has been injured. These determinations in a U.S. case involving goods from Canada, and Canada's parallel determinations in a Canadian case involving goods from the U.S., will be subject to panel review. This symmetry in the panel review process will enhance the rights of U.S. producers and exporters, since judicial review of some Canadian dumping and subsidy findings is not now available.

The panels will review final AD/CVD determinations solely to determine, based on the administrative record, whether the relevant administrative agency applied its national AD/CVD law correctly. The panels will employ the same standard of review and the same general legal principles as would a domestic court. If a panel finds that the administrative agency applied the law correctly, it will affirm the determination. Otherwise, it will send the case back for a corrected determination.

Although formally only the two governments may invoke the panel review process, the governments will automatically trigger panel review at the request of any person who otherwise could have challenged the determination in court. Parties to the case or their lawyers will argue their positions before the panel, as they would before a court. Sensitive business information will be protected against unlawful disclosure in the panel review process.

Panelists will generally be selected from a roster to be developed by the two governments. Individuals on the roster will be U.S. or Canadian citizens chosen for objectivity, reliability, sound judgment, and general familiarity with international trade law. To ensure impartiality, roster members, with the exception of judges, may not be government officials. Individual panels will have five members, the U.S. and Canada each appointing two. The fifth panelist will be chosen by agreement between the two governments, among the four panelists, or by lot from the roster. Because panels will be performing a judicial-like function, a majority of the panelists including the chairman must be attorneys.

The two governments expect the panel system to work smoothly and effectively. As a safeguard against an impropriety or gross panel error that could threaten the integrity of the process, however, the FTA provides for an "extraordinary challenge procedure." In carefully defined circumstances, either government could appeal a panel's decision to a three-member committee of U.S. and Canadian judges or former judges. The committee would make a prompt decision to affirm, vacate, or remand the panel's decision.

The Agreement also establishes a procedure for advisory panel review of amendments to U.S. or Canadian AD or CVD laws enacted after the FTA enters into force. The two governments will consult about any proposed AD/CVD amendments applicable to the other country's goods. If one country changes its AD or CVD statutes, the other government may request that a panel be established to give an advisory opinion on whether the amendment is consistent with the GATT and the FTA.

If the panel views the amendment as inconsistent with the GATT or the Agreement and recommends modifications to eliminate the inconsistency, the two governments will consult to reach a solution, which could include seeking remedial legislation. If

no agreement is reached or remedial legislation agreed on is not enacted, the complaining government may enact a comparable amendment to its AD/CVD law or terminate the Agreement upon 60 days' written notice.

PART SEVEN: OTHER PROVISIONS

Chapter Twenty: Other Provisions

Provisions which did not fall logically into other chapters appear here. Included are some particular sectoral issues, as well as some general rules affecting the overall Agreement.

Softwood Lumber

The 1986 Memorandum of Understanding (MOU) on Softwood Lumber is grandfathered. The MOU resolved a countervailing duty case brought by the U.S. softwood lumber industry against Canada's lumber exports. Canada agreed to apply a 15 percent export tax on lumber until such time as the provincial stumpage pricing practices were altered.

Plywood

Canada will decide by March 15, 1988 whether to allow the use of U.S. standard C-D grade plywood in housing it finances. If so, U.S. tariff concessions on plywood and particleboard will begin to be implemented on January 1, 1989. If not, a panel of experts will examine the issue and the governments will consult on how to implement the tariff concessions.

Culture

It has been the policy of Canadian governments to promote cultural activities with the goal of fostering Canada's unique cultural heritage. Some of these measures have had trade effects and an adverse impact on U.S. commercial interests.

The U.S. recognizes the importance to Canada of maintaining its cultural identity. At the same time, however, the U.S. wants to ensure that Canadian cultural policies do not constitute a discriminatory and unnecessary barrier to U.S. trade.

Certain "cultural industries" are exempt from the provisions of the FTA. This allows either country to maintain programs that would otherwise be inconsistent with the Agreement. However, the other country retains the right to retaliate with measures of equivalent commercial effect whenever the cultural exemption hurts that country's commercial interests. The right to take countermeasures is not subject to prior invocation of the Agreement's

Senator DIXON. Thank you, Mr. Merkin.

Annex 90.25 subparagraph (3) of the Free Trade Agreement provides that:

> The United States will permit Canada to purchase up to 50,000 barrels per day of Alaskan North Slope crude subject to the condition that such oil be transported to Canada from a suitable location within the lower 48 States.

The latter quoted language is in the agreement negotiated by the President's negotiators. When Congress put a provision in the trade bill to carry out this portion of the Free Trade Agreement, the President, I understand, claimed the provision in the trade bill requiring the Alaskan oil to be delivered to Canada from a suitable location within the lower 48 States as unconstitutional.

NEGOTIATION OF AN UNCONSTITUTIONAL PROVISION

Did USTR in fact negotiate an unconstitutional provision; and if so, what will the administration do to remedy the matter?

Mr. MERKIN. Well, it appears that we did. The language which we chose to put in the agreement has caused some problems.

My lawyers inform me that what we need to make sure we do here is that in the implementing legislation—that is, the legislation that will implement this provision—ensure that that is consistent with our constitutional requirements.

The condition that oil be shipped to Canada from the lower 48 States was put in for the benefit of the United States maritime interests and, in fact, reflects the commercial reality that oil exported from Alaska to Canada, even without that provision, would normally be barged to Canada from west coast ports after ocean transport from Alaska to Cherry Point on U.S. bottoms.

We have spoken with the Canadian Government, who are not insisting on its enforcement in the terms of the FTA provision itself. So long as it is implemented domestically in a constitutional way, we believe there is no need to actually change the agreement itself.

Senator DIXON. May I interrupt you at this point. That is the question we want to determine. Are you saying that you don't need to change the agreement itself with respect to that language?

Mr. MERKIN. That is correct. That is the opinion of our general counsel.

Senator DIXON. That is the opinion of counsel?

Mr. MERKIN. Provided we ensure that in the implementing legislation the provision is consistent with our constitutional requirements.

Senator DIXON. Thank you, Mr. Merkin.

Mr. Ammerman, under article 1702 paragraph (3) of the agreement, the United States agrees that any amendments to the Glass-Steagall Act will accord Canadian-controlled financial institutions the same treatment as those amendments accord to U.S. financial institutions.

First, let me ask you is it correct to understand that provision as providing for national treatment of Canadian-controlled financial institutions?

Mr. AMMERMAN. As I understand the question, yes, sir.

dispute settlement provisions.

Cultural activities exempted from the FTA include the publication, sale, distribution or exhibition of: books, magazines, and newspapers; film and video recordings; audio or video music recordings; and also radio, television and cable dissemination. Of course, tariffs will be eliminated on all these products.

In addition, Canada has agreed to alter a number of practices that discriminate against U.S. businesses. These new steps include elimination of a print-in-Canada requirement for tax benefits and increased copyright protection for the retransmission of commercial broadcasts.

Other Provisions

The two governments agreed that if either takes trade actions to counteract a serious deterioration in its balance-of-payments position, it will do so consistent with its rights and obligations under the GATT, the International Monetary Fund and the Organization for Economic Cooperation and Development.

The precedence of the 1980 tax convention is stated because the Agreement takes precedence over other agreements unless specified.

The standard GATT national security disclaimer is adopted, except for energy and government procurement. For energy, there is a more limited national security provision specified in the energy chapter. For government procurement, the GATT Government Procurement Code provision is adopted.

The establishment of government monopolies is expressly permitted, but it must be done in a way that does not violate the principles of the Agreement.

The Agreement states that if measures not expressly prohibited are deemed nevertheless to nullify or impair benefits reasonably expected under the Agreement, dispute settlement can be invoked.

PART EIGHT: FINAL PROVISIONS

Chapter Twenty-One: Final Provisions

The two governments agree to exchange necessary statistical information and to publish information to facilitate implementation of the Agreement. The Agreement will become effective January 1, 1989. It can be amended by mutual agreement and can be terminated by either party with six months' notice.

For Further Information, Contact: Area Code 202

The Office of the U.S. Trade Representative
- Office of Canada.....395-5663
- Office of Public Affairs.....395-3230

Department of Commerce
- Office of Canada.....377-3101
- Office of Public Affairs.....377-3806

Department of Agriculture
- Office of International Trade Policy.....382-1338
- Office of the Press Secretary.....447-4623

Department of the Treasury
- Office of International Trade.....566-8107
- Office of International Investment.....566-5811
- Canada Desk (Financial Services).....566-2747

Department of State
- Bureau of Economic and Business Affairs
  - Office of Trade.....647-1718
  - Office of Public Affairs.....647-1942
- Bureau of European and Canadian Affairs
  - Office of Canadian Affairs.....647-1097

Department of Labor
- Office of International Economic Affairs.....523-6096
- Office of Public Affairs.....523-9711

Department of Energy
- Office of Int'l Affairs and Energy Emergencies....586-5800

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 9, 1983

STATEMENT BY THE PRESIDENT

I am releasing a major statement on international investment. This statement was developed by my Senior Interdepartmental Group on International Economic Policy chaired by Treasury Secretary Regan, and encompasses the views of this Administration on international investment.

The last time such a policy paper was released was in July of 1977 -- more than six years ago. Since then, we have come to view international investment which responds to market forces as a vital and necessary ingredient in a stable, growing world economy.

A world with strong foreign investment flows is the opposite of a zero-sum game. We believe there are only winners, no losers, and all participants gain from it.

International investment flows significantly affect the United States and world economies. With the current environment of widespread international debt problems, foreign direct investment flows take on increased importance. As the pre-eminent home and host country for foreign direct investment, we have a substantial interest in the conditions under which those flows occur.

The statement I am releasing enunciates the fundamental premise of our policy -- that foreign investment flows which respond to private market forces will lead to more efficient international production and thereby benefit both home and host countries.

It also highlights three other important points. First, our concern with the increasing use of governmental measures to distort or impede international investment flows. Secondly, our strong support for the concept of national treatment which extends to foreign direct investors in the United States. And finally, an enumeration of specific multilateral and bilateral steps the Administration has taken, and will take, to help liberalize international investment flows.

A free and open international investment climate will play a key role, not only in sustaining our own economic recovery here at home, but also in resolving many of the current international debt problems.

INTERNATIONAL INVESTMENT POLICY STATEMENT

Executive Summary

International direct investment plays a vital and expanding role in the world economy. To ensure its maximum contribution to both global and domestic economic well-being, the United States believes that international direct investment flows should be determined by private market forces and should receive non-discriminatory treatment consistent with the national treatment principle.

The United States welcomes foreign direct investment that flows according to market forces. The United States accords foreign investors the same fair, equitable, and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

The United States opposes continued and increasing government intervention that impedes or distorts investment flows or attempts to shift artificially the benefits of these flows. These measures include trade-related or other performance requirements, fiscal or financial incentives, and discriminatory treatment of foreign investment.

To counter such measures, the United States will pursue an active international investment policy aimed at reducing foreign government actions that impede or distort investment flows, and at developing an international system, based on national treatment and most-favored-nation principles, that permits investment flows to respond more freely to market forces. The United States will work to protect U.S. investment abroad from treatment which is discriminatory or otherwise inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking is done for a public purpose, is accomplished under due process of law, is non-discriminatory, does not violate previous contractual arrangements, and is accompanied by prompt, adequate, and effective compensation.

In carrying out its international investment policy, in multilateral institutions, the United States will continue to:

- encourage OECD member governments to adhere to, strengthen and extend OECD investment and capital liberalization instruments;
- explore ways of extending the principles embodied in the OECD instruments to non-OECD countries;
- support efforts to increase awareness of the extent and adverse effects of government intervention in order to build a global political consensus to reduce such intervention;
- work toward increased recognition of intellectual property rights;

-- work in the OECD to examine investment problems that affect the service industries, recognizing that for these sectors the opportunity to do business in foreign countries is dependent, in many respects, on the ability to establish foreign operations that are governed by discriminatory investment rules;

-- work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder flows;

-- work to ensure that any technology transfers which occur are carried out on a sound commercial basis subject to national security and foreign policy considerations;

-- encourage the Multilateral Banks to explore ways to strengthen the private sector role in facilitating financial flows to the developing world;

-- support investor access to third-party arbitration to settle investment disputes.

In its relations with individual countries, the United States will:

-- provide services and assistance to American investors abroad, and offer the full support necessary to ensure that their investments are treated in accordance with standards of international law;

-- seek to ensure that the provisions of U.S. Friendship, Commerce and Navigation treaties and bilateral investment treaties and agreements are fully observed;

-- seek to conclude bilateral investment treaties and agreements with interested countries;

-- explore other appropriate ways to support private direct investment in developing countries;

-- reserve the right to take action against the use of performance requirements and similar policies, consistent with international obligations. The United States will also exercise its rights under existing international agreements.

The United States believes that a combination of multilateral and bilateral efforts will contribute to a more open global climate for investment and thus enhance the prospects for economic growth in the United States and globally.

U.S. GOVERNMENT POLICY ON INTERNATIONAL INVESTMENT

I. Setting

The United States believes that international direct private investment plays a vital and expanding role in the U.S. and world economies. It can act as a catalyst for growth, introduce new technology and management skills, expand employment and improve productivity. Foreign direct investment can be an important source of capital and can stimulate international trade. Both home and host country economies benefit from an open international investment system.

International direct investment can provide particular benefits to developing countries. Foreign investment capital can help to expand the domestic resource base, augmenting locally-generated investment and foreign concessional flows. Foreign direct investment may be of particular value to developing countries in that it contributes to domestic productive capacity without increasing the debt service burden. Further, developing countries may look to foreign direct investment to create new employment opportunities and to provide needed managerial and technical skills that cannot be gained through foreign trade.

Under present circumstances, however, international direct investment is being prevented from making its full contribution to global economic growth. While the current world trade and monetary systems (as embodied in the GATT and the IMF) developed after World War II remain an important foundation for the long-term growth and prosperity of the world economy, there unfortunately exists no comparable system for international direct investment. There has been inadequate collective restraint on widespread and distortive interventions by both developed and developing governments, attempting to control the flow of foreign direct investment and the benefits associated with it. While the effects of intervention are difficult to quantify, the impact can be negative for home, host, and third countries because intervention distorts international investment and trade flows, thereby preventing the most efficient allocation of resources.

Useful attempts have been made to address this problem, particularly in the OECD, but progress has been slow. The inability to arrive at an international consensus on these issues has created pressures in many countries, including the United States, to abandon more traditional economic policies based on market forces and to move toward still greater government intervention.

In light of these developments, it is important that there be a clear understanding both at home and abroad of U.S. policies with respect to international direct investment issues and how the United States intends to implement these policies.

II. U.S. Policy Precepts

The United States believes that an open international investment system responding to market forces provides the best and most efficient mechanism to promote global economic development. Government intervention in the international allocation of investment resources can retard economic growth.

The United States has consistently welcomed foreign direct investment in this country. Such investment provides substantial benefits to the United States. Therefore, the United States fosters a domestic economic climate which is conducive to investment. We provide foreign investors fair, equitable, and non-discriminatory treatment under our laws and regulations. We maintain exceptions to such treatment only as are necessary to protect our security and related interests and which are consistent with our international legal obligations.

The United States believes that U.S. direct investment abroad should also receive fair, equitable and non-discriminatory treatment, consistent with international law standards. The basic tenet for treatment of investment is the national treatment principle: foreign investors should be treated no less favorably than domestic investors in like situations. Exceptions should be limited to those required to protect national security and related interests. In these cases, foreign direct investment should be accorded treatment consistent with the most-favored-nation principle.

The United States opposes the use of government practices which distort, restrict, or place unreasonable burdens on direct investment. These include such measures as trade-related or other performance requirements (such as local content, minimum export, and local equity requirements), fiscal or financial incentives. Interference with the market mechanism can cause serious distortions in trade and investment flows, encourage the retaliatory use of similar measures by other governments, and precipitate a downward spiral in global investment flows. The United States intends to continue its efforts to reduce or eliminate measures that restrict, distort, or place undue burdens on international direct investment flows. In this regard, the United States will make a particular effort to prevent the introduction by other countries of new measures of this type. Moreover, the United States will continue to attempt to deal with this issue on a multilateral basis, although non-multilateral approaches may be appropriate on a case-by-case basis.

The United States will continue to work for the reduction or elimination of unreasonable and discriminatory barriers to entry of investment. The United States believes that foreign investors should be able to make the same kinds of investment, under the same conditions, as nationals of the host country. Exceptions should be limited to areas of legitimate national security concern or related interests. Because establishment questions are not adequately covered in existing multilateral instruments relating to investment, the United States will encourage broader exploration, identification and discussion of these issues in the OECD and elsewhere.

The United States is particularly concerned with foreign investment rules that prohibit service industries from doing business abroad. Service sectors are among the most dynamic in today's economy, but there exists a number of limitations that inhibit export opportunities. For many service sectors, there is a universal requirement of establishment in host countries, with the competitive success of these industries heavily dependent upon the presence of branches to meet peculiar regulatory requirements. Thus, the investment policies of foreign countries have special importance to the service sectors.

The United States recognizes that international direct investment frequently serves as a vehicle for transfer of technology and can benefit the economic development goals of both home and host countries. Technology transfers should be carried out on a sound commercial basis, subject to national security and foreign policy considerations.

The United States places high priority on the protection of U.S. investment abroad from discriminatory treatment, or treatment which is inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking (a) is done for a public purpose; (b) is accomplished under due process of law; (c) is non-discriminatory; (d) does not violate any previous contractual arrangements between the national or company concerned and the government making the expropriation; (e) is accompanied by prompt, adequate and effective compensation.

III. General U.S. Objectives

The United States accords foreign investors open access to investment opportunities. What we seek is similar access for United States investors abroad. A major objective of our international investment policy is acceptance of the national treatment principle.

In addition, the United States seeks to:

-- strengthen multilateral and bilateral discipline over government actions which affect investment decisions, such as incentives and performance requirements, particularly when such actions distort international trade and investment flows;

-- reduce unreasonable and discriminatory barriers to establishment;

-- create, through cooperation among developed and developing nations, an international environment in which direct investment can make a greater contribution to the development process;

-- foster a domestic economic climate in the United States which is conducive to investment, ensure that foreign investors receive fair and equitable treatment under our statutes and regulations, and maintain only those safeguards on foreign investment which are necessary to protect our security and related interests and which are consistent with our international legal obligations.

IV. Multilateral

The United States will:

-- continue to adhere to the OECD Investment Declaration and related Decisions on national treatment, international investment incentives and disincentives, and Guidelines for Multinational Enterprises as adopted in 1976 and reviewed in 1979. We also adhere to the OECD Code of Liberalization of Capital Movements, adopted in 1961, and support its expansion;

-- encourage OECD governments to abide by the OECD investment and capital liberalization instruments, and to strengthen and extend these instruments through broader extension of the principle of national treatment and the right of establishment;

-- explore ways of extending the principles embodied in the OECD instruments to non-OECD countries. To increase the effectiveness of these instruments on a global basis, the developing countries, and in particular the newly-industrialized countries, need to be brought into any multilateral understanding on investment;

-- support efforts to increase awareness of the extent and adverse effects that government intervention, e.g., through performance requirements, can have on the U.S. and world economies. This is essential in order to reduce the predatory use of such measures, and especially to limit the introduction of new measures and the expansion of existing measures. The United States will encourage and actively participate in continued work in multilateral institutions to address these questions;

-- encourage adherence by all countries to the Paris Convention for the Protection of Industrial Property, and enactment of effective industrial property laws, guaranteeing recognition of patent, copyright, and other industrial property rights. These are essential for the flow of foreign direct investment into both developed and developing countries. The lack of adequate property rights is a major disincentive to investment in manufacturing facilities and research and development, and to the transfer of technologies. The Paris Convention for Industrial Property Protection is currently undergoing revision under the auspices of the World Intellectual Property Organization. The United States will support continued efforts aimed at improving protection of industrial property rights, fight to maintain current protection levels where they are adequate and to upgrade protection where it is inadequate, and work to ensure that such principles are upheld in negotiations of codes relating to transfer of technology and transnational corporations which are now underway in the U.N.;

-- continue to work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder data flows;

-- encourage adherence to the Code of Capital Movements and support its expansion;

-- support the Multilateral Development Banks in their efforts to foster more rapid economic growth in the developing countries. The United States will continue to encourage the Banks to explore ways to develop new programs to strengthen the private sector role in financial flows to the developing world;

-- support investor access to third-party arbitration to settle investment disputes, such as the facilities of the World Bank's International Centre for the Settlement of Investment Disputes. The United States believes that governments should effectively support investor access by adherence to the Convention of the Settlement of Investment Disputes between States and Nationals of Other States or the Inter-American Convention on International Commercial Arbitration, and by evidencing their commitment to be bound by third-country arbitral awards by adhering to the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.

V. In its bilateral relations, the United States:

-- in cases of expropriation or nationalization of American investment abroad, will provide full support for American investors to ensure that standards of international law are honored by host governments;

-- will provide appropriate facilitative services to assist American investors overseas and, in particular, will assist them in obtaining information on the host country investment climate, economic objectives, and investment opportunities;

-- will work to ensure that the relevant provisions of our Friendship, Commerce and Navigation treaties are fully observed;

-- as a means to facilitate and protect American investment, will seek to conclude bilateral investment treaties and agreements with interested countries. The treaties will contain appropriate provisions on, inter alia, treatment of existing and new investment (including national treatment and most-favored-nation treatment); transfers; dispute settlement; use of performance requirements; and compensation in the event of expropriation;

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-- will explore, through our bilateral economic assistance programs with developing countries, appropriate ways to increase non-official flows, and will seek to ensure that these programs effectively support private direct investment;

-- reserves the right to take unilateral action against the use of performance requirements and similar policies, consistent with our international obligations. The United States is now exercising and will continue to exercise its rights under existing international arrangements, including the GATT and OECD.

The United States believes that a combination of multilateral and bilateral efforts will contribute to the achievement of a more open global climate for investment, and thus enhance the prospects for economic growth in the United States and globally.

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Senator DIXON. Would that provision provide any change in the bill we passed over here, S. 1886, that we passed here in the Senate? That is now in the House, as you know.

Mr. AMMERMAN. We are looking at the provisions of S. 1886, very carefully Mr. Chairman, lawyers both from the domestic finance side and the international financial side of the Treasury are reviewing the provisions.

But let's phrase it this way: at this point in time they have not seen anything which they would view as major or substantive. If it looked as though there were a problem, they would raise it.

Senator DIXON. If you would let us know and the chairman of the committee in particular, Senator Proxmire, because as you know, we passed that bill over here 94-2. It is over in the House, and we presume that our colleagues over there would at least give us the courtesy of sending some bill back that we can send to conference so that we can get major legislation this year.

I think it would be very important that folks like you make your views known about anything in that bill that would need to be corrected in view of this agreement.

Mr. AMMERMAN. It is possible that there might be minor technical points. But at this point I have not seen anything substantive. We are reviewing it very carefully, and we will certainly take your caution to heart.

Senator DIXON. Thank you.

Let me ask you another question or two on that. Let's suppose for the sake of this question that S. 1886, the Proxmire Financial Modernization Act of 1988, were in law, that it was enacted after the United States-Canadian Free Trade Agreement became law.

Would you agree that a U.S. bank holding company could not buy a Canadian bank and through that bank sell insurance in the United States?

Mr. AMMERMAN. I think I would agree to that, sir. Let's chat a bit, if I may, a bit of background. In its deregulation of the financial services in Canada, Canada has decided to permit banks to own insurance companies, and vice versa. Insurance companies can own banks.

As a result of the FTA, U.S. financial institutions will be able to diversify their activities in Canada on the same basis as Canadian firms.

Senator DIXON. In other words, a Canadian bank that would come in here would be subject to the provisions essentially of S. 1886, however it might emerge? Essentially, that would be a State's rights thing, as provided in that bill now?

RECIPROCITY AGREED UPON

Mr. AMMERMAN. Let me try to give a simple, nonlawyer's answer, if I may. My concerns are two. My concerns are: in Canada, that U.S. banks, U.S. insurance firms receive national treatment, receive the same rights in Canada that Canadian companies have in Canada.

However, the FTA does not affect U.S. laws and regulations on the subject in any way. It provides no authority whatsoever for an affiliation independent of current U.S. law.

Senator DIXON. In other words, a Canadian bank has the same standing as an American bank in America?

Mr. AMMERMAN. That is correct.

Senator DIXON. If it was a bank not domiciled in the State, in the law as we passed it in the Senate a holding company has to be domiciled in the State. Is that correct? That is, as I recall the state of the law. The Canadian bank would be treated as a nondomiciled holding company-type bank, I take it, not domiciled in the State?

Mr. AMMERMAN. I would like to review a specific example.

Senator DIXON. We are going to send you some written questions, Mr. Ammerman. I am not trying to give you anything as a matter of first impression here, to stop you. We are really wanting to know these answers from the perception of folks like you, and we are going to give you a series of written questions. I am not going to belabor it extensively, because we have another panel and time constraints. [See p. 108.]

But if I may say this, Mr. Lefkin, who will later testify on behalf of the American Insurance Association voices concerns on pages 5 and 6 of his testimony that chapter 14 of the agreement might impinge on the State regulation of insurance.

His concern appears to be that disputes about whether a given State was carrying out its obligation to give "national treatment" to Canadian insurance companies would be settled by a forum beyond that State and it could be a breach in the McCarran-Ferguson Act to allow the States to regulate insurance. And we are just wondering if that is a legitimate concern and, if so, how we would resolve it?

Mr. AMMERMAN. Two points. First, there are no specific commitments under the Financial Services Chapter concerning the ability of banks to engage in insurance activities in the United States. Since the Proxmire bill treats domestic and foreign bank holding companies alike, it is not inconsistent with chapter 17 of the FTA.

You have asked if it conflicts with chapter 14 on services. It is difficult to answer this question definitively without an actual case to consider, and also recognizing that we don't yet know what final form the banking bill may take and whether it will be enacted before or after the FTA.

However, based on our understanding of the Proxmire bill and the typical State statutes, we believe the better interpretation is that this is a matter which is not covered by chapter 14.

But I will look forward, sir, to receiving your questions and being able to answer them in more detail.

Senator DIXON. I thank you very much. And thank you for your cooperation, Mr. Ammerman.

Mr. Canner, the trade bill has an amendment that has an Exon-Florio provision that authorizes the President to take over that which threatens national security. Is there anything that would apply to the takeover of a U.S. firm by a Canadian firm?

Mr. CANNER. No. There is nothing in the Free Trade Agreement that would inhibit us in terms of applying the Exon amendment.

Senator DIXON. If Congress decided to adopt a Bryant-type amendment, would that violate the investment provisions of the United States-Canada Free Trade Agreement?

Mr. CANNER. I believe it would. It would violate the principle of national treatment.

Senator DIXON. The overall dispute settlement mechanism, Mr. Canner, provided in the U.S.-Canada Free Trade Agreement does not govern disputes that arise under chapter 17 of the agreement dealing with financial services. Does it apply to disputes that arise under chapter 16 dealing with investments?

Mr. CANNER. Yes, it does. Yes, sir.

Senator DIXON. Gentlemen, you have been very helpful. I have some more questions here. It is very interesting. We would like to be able to develop it more, but we have another panel and some time constraints.

Let me ask these last two, and then I would ask if all of you would be kind enough to accommodate us by answering some questions. The staff has given me this question.

INSURANCE ACTIVITIES OF BANKING INSTITUTIONS

Am I correct, Mr. Ammerman, that nothing in the United States-Canada Free Trade Agreement would restrict the right of any State to enforce or enact any law restricting the insurance activities of banking institutions?

Mr. AMMERMAN. The free trade financial agreement does not apply to States.

Senator DIXON. Does the provision of insurance by banks, either Canadian or United States, is a matter covered by article 17, which governs financial services and not by article 14, which governs services generally? That is kind of a repetition of what I have already asked you, I guess, in a way.

Mr. AMMERMAN. That is a fairly complex question, sir, because insurance is covered in at least three different parts of the overall FTA. It is covered in the services part in terms of insurance as insurance, underwriting and selling insurance. It is covered in the investment part in terms of going in and establishing.

We made very certain that we covered insurance in the financial part in order to get exclusions from 10/25 and to give U.S. insurance companies the right to expand and diversify in Canada in securities and banking in the same way as banks and securities firms in Canada could diversify into insurance activities in Canada.

Now, that is a long-winded answer, and it could be developed with considerably more time. But insurance is covered in three parts of the FTA. The part that I mentioned, chapter 17, gets into those financial aspects of insurance and the diversification and the exemption from the 10/25 rule.

Senator DIXON. It is clear that staff would like further clarification of these questions.

Mr. AMMERMAN. We would be happy to meet with staff and respond.

Senator DIXON. If you get the questions, if you could clarify them so that we have some kind of a record. I am sure that my own belief is that the conference on this question will probably take place, you know, after we have adopted this agreement and, as a consequence of it, we will be compelled to look at all of those questions carefully, I am sure.

I asked my staff to request of all of you—and I know it is something of an imposition—could you by late Monday provide answers to these questions?

Our markup is Tuesday, and I am advised that these are matters of immediate concern for the committee. I appreciate the imposition, this being Friday. Perhaps as you are leaving here, as you leave here—perhaps staff could give you those questions right now so that your staff could address it, at least beginning this afternoon, and possibly by late Monday we could have this back in hand. It would be an accommodation we would greatly appreciate.

Mr. AMMERMAN. If it is all right with you, I will on this point ask the Treasury's Deputy General Counsel, Ms. Archibald, to undertake to supply the answers. I will be leaving over the weekend to serve as Vice Chairman of the OECD Committee on Financial Markets in Paris. But Ms. Archibald will undertake providing answers and getting them by Monday afternoon.

Senator DIXON. Does my distinguished friend from Tennessee have any questions of this panel? We are ready to go to the next panel.

Senator SASSER. Just very quickly.

I have a statement that I ask unanimous consent be included in the record.

Senator DIXON. Without objection.

STATUS OF CANADIAN LAW WITH REGARD TO HOSTILE TAKEOVERS

Senator SASSER. The agreement endorses the continued enforcement of the Investment Act by Canada. This law gives Canadian governmental authority—a Canadian governmental authority or agency, Investment Canada, the authority to review acquisitions of Canadian companies by Americans, but there is no such authority for the U.S. Government to review acquisitions by Canadian firms.

Is that correct?

So if we got into a hostile takeover situation, the Canadian Government could step in and prevent the hostile takeover by the American company of a Canadian firm. But if a Canadian firm sought to exercise a hostile takeover of an American firm, there would be no such defense available to the American firm subject to the hostile takeover.

Is that correct?

Mr. CANNER. That is correct. But if I could add a qualifier.

If the U.S. takeover of the Canadian firm was above the threshold level, let's say 150 million Canadian dollars, after the phase-in period, it is only under those circumstances that the Canadian Government under Investment Canada would be able to review the investment and presumably, if they wanted to for some reasons, to delay it or to block it for not being of net benefit to Canada.

Senator SASSER. What is the status of Canadian law with regard to hostile takeovers, not just by American firms but hostile takeovers by——

Mr. CANNER. I don't know if they have a specific provision with regard to hostile takeovers. I would like to provide that for the record if I may.

Senator SASSER. I would be interested in seeing what provisions they have.

[The following information was subsequently submitted for the record:]

RESPONSE TO QUESTION FROM SENATOR SASSER

Canada does not have a law regarding hostile takeovers.

Mr. Chairman, that is my only question.

Senator DIXON. I thank the distinguished Senator from Tennessee, Senator Sasser, and I thank this panel.

And may we have Mr. Yingling, Mr. Hormats, Mr. Lefkin, and Mr. Ruth up here, please?

We appreciate the accommodation in getting the answers to us. We know it is an imposition.

Senator SASSER. Mr. Chairman, while this next panel is taking their seats, I also have some letters that I would like to have included in the record:

One, my letters to Mr. Ruder, Chairman of the SEC, and then Mr. Ruder's response, with regard to the——

Senator DIXON. There is a little turmoil here.

Do you want to put those in the record, Senator?

Senator SASSER. I want to put those in the record following my statement.

Senator DIXON. Those statements that the Senator has suggested should be put in the record—will we put in the record immediately following the statement of the Senator from Tennessee.

Senator SASSER. I thank the Senator.

[Opening statement of Senator Sasser follows:]

STATEMENT OF SENATOR JIM SASSER, SENATE BANKING COMMITTEE, MAY 20, 1988

MR. CHAIRMAN, I AM PLEASED THAT THE COMMITTEE IS CONSIDERING THE FINANCIAL SERVICES ASPECTS OF THE U.S. CANADA - FREE TRADE AGREEMENT. I HAVE ONE CONCERN WITH THIS AGREEMENT THAT IS A LITTLE OFF THE BEATEN PATH.

THE AGREEMENT ENDORSES THE CONTINUED ENFORCEMENT OF THE INVESTMENT CANADA ACT BY CANADA. THIS LAW GIVES A CANADIAN GOVERNMENTAL AGENCY, INVESTMENT CANADA, THE AUTHORITY TO REVIEW ACQUISITIONS OF CANADIAN COMPANIES BY AMERICANS. THERE IS NO AUTHORITY BY THE U.S. GOVERNMENT TO REVIEW ACQUISITIONS BY CANADIAN FIRMS.

CONSEQUENTLY, MANY AUTHORITIES BELIEVE THAT THIS MAKES AMERICAN COMPANIES MUCH MORE VULNERABLE TO ACQUISITION BY CANADIANS. INDEED, AN AMERICAN COMPANY SUBJECT TO A HOSTILE BID

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FROM A CANADIAN FIRM CAN NOT EXERCISE THE DEFENSE OF ATTEMPTING TO ACQUIRE THE ACQUIROR -- THE SO-CALLED "PAC-MAN" DEFENSE.

I HAVE BEEN CONCERNED ABOUT THIS FOR AWHILE. BOTH, FEDERATED DEPARTMENT STORES AND BURLINGTON INDUSTRIES, MAJOR EMPLOYERS IN MY STATE HAVE BEEN SUBJECT TO HOSTILE TAKEOVERS BY CANADIAN COMPANIES.

AND THIS IS A SUBJECT THAT I HAVE FORMALLY BROUGHT TO THE ATTENTION OF THE SECURITIES AND EXCHANGE COMMISSION.

MOREOVER, THIS ISN'T JUST AN ISSUE THAT IS PECULIAR TO CANADA. MURRAY OHIO, AN EMPLOYER OF SEVERAL THOUSAND IN RURAL LAWRENCE COUNTY TENNESSEE, IS CURRENTLY SUBJECT TO A HOSTILE BID BY THE SWEDISH FIRM OF ELECTROLUX AB. I AM TOLD THAT IT WOULD BE ILLEGAL UNDER SWEDISH LAW FOR MURRAY TO MAKE A HOSTILE BID FOR ELECTROLUX AB.

MR. CHAIRMAN, THE EQUITY OF THIS SITUATION IS OF GREAT CONCERN TO ME. HOWEVER, IT MAY BE MORE APPRORIATE TO EXPLORE THE ISSUE IN THE CONTEXT OF TENDER OFFER REFORM LEGISLATION THAT I HOPE WILL BE BEFORE THE FULL SENATE IN THE NEAR FUTURE. THANK YOU!

WILLIAM PROXMIRE, WISCONSIN, CHAIRMAN
ALAN CRANSTON, CALIFORNIA
DONALD W. RIEGLE, JR., MICHIGAN
PAUL S. SARBANES, MARYLAND
CHRISTOPHER J. DODD, CONNECTICUT
ALAN J. DIXON, ILLINOIS
JIM SASSER, TENNESSEE
TERRY SANFORD, NORTH CAROLINA
RICHARD C. SHELBY, ALABAMA
BOB GRAHAM, FLORIDA
TIMOTHY E. WIRTH, COLORADO
JAKE GARN, UTAH
JOHN HEINZ, PENNSYLVANIA
WILLIAM L. ARMSTRONG, COLORADO
ALFONSE M. D'AMATO, NEW YORK
CHIC HECHT, NEVADA
PHIL GRAMM, TEXAS
CHRISTOPHER S. BOND, MISSOURI
JOHN H. CHAFEE, RHODE ISLAND
DAVID R. KARNES, NEBRASKA
KENNETH A. McLEAN, STAFF DIRECTOR
LAMAR SMITH, REPUBLICAN STAFF DIRECTOR AND ECONOMIST

United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510-6075

February 23, 1988

The Honorable David S. Ruder
Chairman
Securities and Excnange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Mr. Ruder:

I am writing with regard to the recently announced tender offer of Campeau Corporation of Toronto, Canada, for Federated Department Stores, headquartered in Cincinnati, Ohio. I believe that the Commission should (1) comment on the fairness of the "Free-Trade Agreement," recently signed with Canada, as it affects certain hostile corporate takeovers and (2) investigate evidence or possible violations of the disclosure and other provisions of the securities laws by Campeau in its bid for Federated.

In the past few years, there have been several unsolicited tender offers for American companies from Canadian investors. In contrast, over the past five years, there has been only one tender offer by an American for a Canadian company. This is in large part the result of Canadian governmental policy to deter unsolicited non-Canadian takeovers of Canadian companies. Indeed, this policy is perpetuated by the "Free-Trade Agreement," recently signed with Canada, which expressly provides that Canada may continue to review the acquisition of control of a Canadian business by an American investor in order to determine whether or not to permit the acquisition. However, the U.S. government has no authority to protect American businesses from hostile corporate takeovers by Canadians.

Campeau's recent takeover bid for Federated illustrates the inequity that U.S. companies face. Under U.S. law and policy, Campeau's bid is treated the same as a takeover by an American company. Yet if the situation were reversed, Canadian law would likely protect a Canadian company against a tender offer by an American company. Moreover, this imbalance could preclude the exercise of certain defensive tactics (such as the "Pac-Man" defense where the target seeks to acquire the bidder), making American companies even more vulnerable to takeovers.

In addition, there is evidence that the disclosure requirements under Section 14(d) and 14(e) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78n(d) and 78n(e), have been violated by Campeau in his offer for Federated. In particular, there is evidence that Campeau has grossly overstated the likelihood that it can obtain the necessary financing for the acquisition of

Federated. Indeed, Campeau has failed to disclose that it would have to substantially liquidate Federated assets in order to finance the offer. Moreover, Campeau has failed to disclose all the bidders on whose behalf the offer is being made, and has overstated its own financial condition.

Further, there is a possibility that collusive and manipulative activities have occurred in connection with this bid and a prior one by Campeau. In December 1986, Campeau purchased 25.8 million shares of Allied Stores Corporation from Jefferies & Co. in a single trade. Three months later, Boyd Jefferies pleaded guilty to charges of "parking" or hiding large amounts of stock on behalf of Ivan Boesky. On January 25, 1988, the same day that Campeau announced its tender offer for Federated, Jefferies & Co. seperately announced it was making a market in Federated's stock. While there may not be improprieties underlying the two Campeau bids, the apparent continuing connection between Campeau and Jefferies is cause for some concern.

As you may know, Federated Stores is a major employer in, and significant corporate citizen of, Tennessee. It employs over 2,600 Tennesseans and owns the well-known Goldsmith's department store in Memphis. The company had a statewide payroll of almost $30 million and paid $2.2 million in taxes in 1986. Additionally, Federated made contributions of almost $500 thousand to Tennessee charities in 1987. If, as is very likely, Campeau follows a course with Federated similar to the one he pursued with Allied, it is probable that there will be substantial job losses and store closings at Goldsmith's and other Federated operations, due to the extremely high debt that Campeau would necessarily incur if it acquires Federated. Thus, I am very concerned with the community impact of this acquisition, as well as the trade and securities issues that I addressed earlier.

In conclusion, I request that the Commission comment on the equity of the Canadian policy to deter takeovers by American investors, as manifested in the Free-Trade Agreement, and its effect on American businesses. Additionally, I request that the Commission review the bid for Federated for possible violations of the disclosure and other requirements of the securities laws. Thank you for your attention to this matter. I look forward to your report.

Sincerely,

Jim Sasser

Jim Sasser
United States Senator

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON D.C. 20549

OFFICE OF
THE CHAIRMAN

March 30, 1988

The Honorable Jim Sasser
United States Senate
Committee on Banking, Housing,
and Urban Affairs
Washington, D.C. 20510-6075

Dear Senator Sasser:

Thank you for your letter of February 23, 1988 requesting that the Commission provide its views concerning the U.S. - Canada Free-Trade Agreement and that it review Campeau Corporation's recent bid for Federated Department Stores, Inc. for possible securities law violations. The Commission has not had an opportunity to consider this matter and the views expressed herein are my own.

With respect to the Free-Trade Agreement, I recognize that the approval of such an agreement would endorse continued enforcement of the Investment Canada Act in its amended form. Under the Investment Canada Act, a Canadian agency -- Investment Canada -- has authority to review certain investments by non-Canadians to acquire control of a Canadian business or to establish a new Canadian business in order to determine whether such investments are likely to be of benefit to Canada. The United States, on the other hand, is obligated under the Agreement to maintain its open investment policies. Accordingly, I feel some misgiving about the fact that U.S. entities will continue to be subject to the Investment Canada Act. Given the increasing number of foreign bidders in tender offers in the United States, it appears that in the interest of fair and free trade, United States entities should be provided with an equal opportunity to acquire companies in foreign nations.

Nevertheless, while the Free-Trade Agreement does not provide for the repeal of the Investment Canada Act, the Agreement does achieve major liberalization of the Act. Under the Agreement, Canada's threshold for review of direct acquisitions by United States investors is gradually raised from the current C$5 million to C$150 million (in constant 1992 Canadian dollars) after three years from the date of the Agreement's effectiveness. In addition, Canada will no longer review indirect acquisitions after the end of that three year period. Canada also will apply these higher

thresholds to an acquisition by a non-U.S. or Canadian purchaser when a U.S. investor seeks to sell such a purchaser its Canadian business.

The proposed amendment to the Investment Canada Act under the Free-Trade Agreement may be an important step in minimizing investment barriers between the United States and Canada. In addition, the Agreement is the product of extensive negotiations and at the present time the repeal of the Investment Canada Act may not be feasible.

In sum, I am troubled by the fact that the U.S. entities will continue to be subject to the Investment Canada Act. In light of the Agreement's significant liberalization of the Act, however, I would not object to the approval of the Agreement. In addition, I certainly would not recommend the enactment of protectionist legislation comparable to the Investment Canada Act in response to the Free-Trade Agreement. A competitive, honest market is the best arbiter of the many complex and intricate issues raised by international takeover activity.

With respect to your concerns about Campeau's bid for Federated, I appreciate the information you have provided in this matter. As you know, the Commission does not confirm or deny the existence of an investigation unless and until public proceedings are instituted, in order to protect the rights of individuals involved. Nevertheless, in response to some of your concerns, I can provide you with information that has been filed with the Commission.

Although Campeau commenced its tender offer for Federated without firm financing, as of March 23 Campeau had received financing commitments for a portion of its revised offer. Campeau has announced plans to finance the first stage of its takeover plan (costing approximately $6.1 billion) with an equity investment of $1.4 billion, to be provided from various sources. A syndicate of eleven banks has agreed to provide a margin facility of $2.9 billion. First Boston, Inc., Paine Webber Group, Inc. and Dillion Read Interfunding, Inc. have indicated a willingness to provide commitments with respect to $1.8 billion in bridge financing.

With respect to the sale of assets, Campeau has announced that its subsidiary, Allied Stores Corp., has agreed in principle to sell its Brooks Brothers division to Marks and Spencer PLC. Campeau also has announced that it has entered into a definitive agreement pursuant to which May Department Stores Co. has agreed to purchase two divisions of Federated, valued at about $1.5 billion, upon Campeau's successful acquisition of Federated.

With respect to disclosing all bidders on whose behalf the offer is being made, Campeau listed the CRTF Corporation, a wholly owned subsidiary of Campeau Corporation, as the bidder on the Schedule 14D-1 and amendments thereto filed with the Commission. Pursuant to General Instruction C to Schedule 14D-1, which requires the same disclosure called for with respect to the bidder with respect to each person controlling the bidder, information concerning Campeau Corporation and Robert Campeau, its President, and other Campeau executives and affiliates was disclosed in CRTF's initial Schedule 14D-1.

With respect to Campeau's financial condition, Campeau included as Schedule 14D-1 exhibits, in response to Item 9, financial information concerning Campeau including audited consolidated financial statements as set forth in Campeau's registration statement on Form 20-F dated October 9, 1987, as amended, and unaudited interim consolidated financial statements relating to the quarters ended September 20, 1987 and 1986, filed with the Commission on January 25, 1988, as part of Campeau's Report on Form 6-K. Item 9, which requires disclosure of the bidder's financial condition when such information is material to a decision by a security holder of the subject company whether to sell, tender or hold the securities being sought, provides a safe harbor for foreign bidders by deeming financial information prepared in accordance with Item 17 in Form 20-F to be adequate for purposes of Item 9 disclosure.

Finally, many of the matters discussed above are the subject of litigation in the United States District Court for the Southern District of New York. */ At the request of the Court, the Commission has participated as amicus curiae on various issues, including the need for Campeau to provide shareholders adequate time to consider information concerning its financing arrangements after firm commitments are obtained with respect to all or substantially all of the unfinanced portions of the offer.

I hope these views on the Free-Trade Agreement and the information on the Campeau/Federated transaction are helpful to you. If the Commission can be of further assistance to you, please do not hestitate to contact me.

Sincerely yours,

David S. Ruder

David S. Ruder
Chairman

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*/ CRTF Corp. v. Federated Dept. Stores, Inc., et al., 88 88 Civ. 487 (LBS) (S.D.N.Y.); R.H. Macy & Co., et al. v. Campeau Corp., et al., 88 Civ. 1548 (LBS) (S.D.N.Y.)

Senator DIXON. I thank the distinguished Senator from Tennessee.

This distinguished panel consists of Mr. Edward Yingling, executive director of the American Bankers Association; Mr. Robert Hormats, vice chairman, Goldman Sachs International; representative—Mr. Lefkin, I believe you are counsel for the American Insurance Association—and Mr. David Ruth, director of the International Corporate Affairs of American Express.

And again, gentlemen, I am impelled to tell you that we do have time constraints. Beginning at 11:30, a little better than 45 minutes, we will start a series of five roll calls that will prevent us from getting back here to continue the hearing.

So if you could keep your remarks to 5 minutes, it would be greatly appreciated, and we first recognize Mr. Ed Yingling, executive director of the American Bankers Association.

STATEMENT OF EDWARD L. YINGLING, EXECUTIVE DIRECTOR, AMERICAN BANKERS ASSOCIATION

Mr. YINGLING. Thank you.

I am executive director of government relations for the American Bankers Association. I am pleased to have this opportunity to testify regarding the ABA's support for ratification of the United States-Canada Free Trade Treaty.

On April 19, 1988, the American Bankers Association and the Canadian Bankers Association joined together in a joint letter to the chairman and ranking member of the Senate Foreign Relations Committee, expressing support for the Agreement because it would provide "equality of treatment within the national boundaries" of the United States and Canada for banks and securities firms of both nations.

Earlier this month, we forwarded a copy of this joint communication to Chairman Proxmire and to Senator Garn.

As the joint letter states:

> * * * this opening of our markets should enhance competitive opportunities for both nations' institutions. It may also serve to strengthen the competitive effectiveness of our institutions in the face of inroads from financial institutions from foreign countries.

The United States-Canada Free Trade Agreement cannot be viewed simply as a bilateral agreement between the world's two largest trading partners, with more than $135 billion in annual commercial exchanges, to construct the world's largest shared market. While the Agreement is of momentous significance on those grounds alone, it may also be viewed as a model for adjusting trade in financial services to the realities of marketplace globalization which has already arrived and is certain to grow dramatically.

INTERNATIONAL COMPETITIVENESS

I would like to make a few comments about the issue of international competitiveness. Two months ago, Arthur Andersen & Company released a new report entitled "The Globalization of the International Financial Markets: Implications and Opportunities." The major conclusion of this study, with which we fully concur, is the following:

"We believe that globalization of the financial markets is not a myth—it is a reality that is here to stay."

As evidence for this proposition, the study cites the fact that 22 percent of all U.S. corporate bond financings—$44 billion—were conducted abroad in 1986; that U.S. investors purchased a record $102 billion of foreign equities in 1987 while foreign investors in that same year purchased and sold $277 billion in U.S. equities; and that large U.S. corporate customers now borrow nearly 30 percent of their funds from foreign banks, while all U.S. businesses receive one-fifth of their loans from foreign banks.

This committee is well aware that the ranking of U.S. banks in terms of both assets and deposits has declined dramatically over the past decade, particularly in comparison to the banks of Japan.

MARKET VALUATION

The challenge of retaining leadership appears even more formidable when market valuation is considered. Market valuation translates into the capacity to undertake new research and make strategic acquisitions—in other words, market power.

Of the world's 50 largest financial institutions in terms of market valuation in 1986, 27 were Japanese while only 11 were U.S. companies. The first 16 firms ranked by market capitalization are all Japanese, ranging from Nomura Securities—$59 billion—to Mitsui Trust & Banking Co.—$19 billion.

By comparison, the largest U.S. diversified financial company, American Express, had $16 billion; the largest U.S. insurance company, American International Group, had $12 billion; and the highest valued U.S. banking corporation, J.P. Morgan, had $8 billion.

That means each of the largest Japanese firms, the top three or four, have seven times the market capitalization of the largest U.S. banking corporation.

Our Japanese competitors make no secret of the fact that they and their regulators view financial structure, including the evolving deregulation of Japanese financial institutions, as a strategic aspect of their overall trade policy.

U.S. LEADER IN FINANCIAL SERVICES

Financial services is clearly an area where the United States can retain world leadership. Strength in financial services can assist all other U.S. economic sectors in achieving their aspirations in international trade.

This committee has already taken an important step toward greater international competitiveness for U.S. banks when it passed the Glass-Steagall reform provisons of the Proxmire Financial Modernization Act. We appreciate your efforts, Senator Dixon, in putting together that package.

To the extent that the United States-Canada Free Trade Agreement helps to establish a more efficient North American economic marketplace, it will contribute greatly to the continued vitality of U.S. financial institutions.

The economic status of the banking system generally reflects the well-being of the economy it serves. Inasmuch as it is generally anticipated that the Agreement's ratification and implementation

will enhance the economic health of both nations, banks will be the indirect recipients.

But the Agreement also provides many direct benefits to both U.S. and Canadian banks. In general, it recognizes the growing interdependence of the international economy by pledging both nations to undertake the elimination of discriminatory policies against their respective financial institutions and to replace them with improved access and new competitive opportunities consistent with prudential and regulatory requirements.

In conclusion, Mr. Chairman, the ABA supports the United States-Canada Free Trade Agreement and urges rapid approval of the implementing legislation.

[The complete prepared statement of Mr. Yingling follows:]

Senator DIXON. You must have timed that. That was perfectly 5 minutes. I congratulate you.

Mr. YINGLING. I just saw the light.

Senator DIXON. I congratulate you and recognized my distinguished friend from Florida, Senator Graham.

Do you have an opening statement of any kind, Senator?

Senator GRAHAM. No, Mr. Chairman, other than to say that I am pleased we are holding this hearing. I am a strong supporter of this treaty. I believe it represents an important development, not only in United States-Canadian relations, but offers the harbinger of expanded similar relationships throughout the hemisphere.

I appreciate the quality of the panelists, who are educating us on those benefits.

Senator DIXON. I thank my friend from Florida.

Mr. Hormats.

ROBERT D. HORMATS, VICE CHAIRMAN, GOLDMAN SACHS INTERNATIONAL CORP.

Mr. HORMATS. It is a pleasure to be here.

Mr. Yingling has made a number of very key points, and I will try to avoid, in the interest of time, duplicating those.

As as a former Deputy U.S. Trade Representative and Assistant Secretary of State for Economic and Business Affairs, I have had the opportunity on a number of occasions to negotiate with my Canadian counterparts. While these negotiations were not always easy, and agreement was often elusive, we all agreed that we had such a close economic relationship, and such a close security relationship, that resort to protectionism was simply unacceptable on both sides and that our prosperity was mutually intertwined. We could not have periods of prolonged disagreement without disrupting a very close and very important economic relationship.

The Free Trade Agreement, for which the leaders of both nations deserve much credit, underscores that point. It confirms for the American and Canadian private sectors what they have understood for some time—that they are economically better off if our nations can broaden and deepen economic relations and reduce business uncertainties.

MAJOR COMPETITORS ARE ACROSS THE OCEANS

The major competitors that we in the United States and Canada face are rarely in North America, but across the Pacific and the Atlantic. Broadening the access of firms in Canada and the United States to this vast North American market can strengthen the ability of each nation's industries, farms, and financial institutions to compete with European and Asian counterparts.

The Europeans have already recognized that their own competitive strengths will be enhanced by eliminating intra-EC impediments to internal trade, labor movement, and capital mobility—a goal they have set for 1992.

The United States-Canadian Agreement recognizes the same point. It establishes a framework of legal and procedural agreements, which further open trade and investment between these two

nations, provides ways to resolve differences, and expands commercial and financial relations.

It also provides, as Senator Graham has mentioned, precedents that might be used in the future. It sets up a prototype inasmuch as it is the first agreement which deals with investment and services, and therefore both Canadian and American negotiators, can use this in the Uruguay round of trade negotiations to encourage other countries to open up as well.

Speaking as a representative of an American securities firm, we believe this provides important opportunities for us in Canada and for other financial institutions as well. We have found that the reception we have gotten in Canada is very warm. We have much appreciated the assistance given us by the Department of Finance, the Bank of Canada, and the Province of Ontario.

Always when you are settling in there are a few problems, but most of these have been ironed out, we believe, in a very constructive way.

I think it is also important that in the Agreement—and I will not go into all of the details because they have been described earlier in the earlier panel—in addition to the rules is a consultative mechanism which permits both sides to ask for consultation on any matters that relate to the agreement, including specific undertakings by either side and general commitments to proceed further with domestic financial liberalization.

CANADIANS CONSIDERING FURTHER LIBERALIZATION

This will be very helpful because, as you know, the Canadians are considering further liberalization. This consultative mechanism helps us to avoid problems and, indeed, resolve differences which could occur during that process—although we don't really believe any will.

It is impossible to determine the precise quantitative benefits of this agreement for either nation's financial industry. But the basic point is that each now has opportunities in the other country, and each now has committed itself to maintain the commitment of nondiscrimination as its relations evolve.

To be sure, neither nation got everything it wanted, but few negotiations yield full satisfaction. In every agreement of this sort some sectors gain and others lose, but the preponderance of the evidence is that on balance the private sectors of both countries came out winners in the agreement. Each nation's companies will have broader markets and greater confidence about the conditions of doing business in the other country.

This is not, I would conclude, an agreement among accountants, the winners and losers, of which can be calculated strictly on the basis of dollar balances. It is an agreement that will take both nations into the 21st century as stronger trading partners and improve the global competitive prospects of the large majority of their companies and their financial institutions.

Thank you.

[The complete prepared statement of Mr. Hormats follows:]

STATEMENT OF

EDWARD L. YINGLING

EXECUTIVE DIRECTOR, GOVERNMENT RELATIONS

AMERICAN BANKERS ASSOCIATION

BEFORE

SENATE BANKING COMMITTEE

CONCERNING

UNITED STATES - CANADA

FREE TRADE AGREEMENT

MAY 20, 1988

Mr. Chairman and members of the Committee, my name is Edward L. Yingling and I am Executive Director of Government Relations for the American Bankers Association. I am pleased to have this opportunity to testify regarding the ABA's support for ratification of the United States - Canada Free Trade Treaty. As you may be aware, the combined assets of our Association's members comprise about 95 percent of the commercial banking industry. While our members range in size from the smallest to the very largest banks, some 85 percent of our members have assets of less than $100 million.

On April 19, 1988 the American Bankers Association and the Canadian Bankers Association joined together in a joint letter to the Chairman and Ranking Member of the Senate Foreign Relations Committee expressing support for the Agreement because it would provide "equality of treatment within the national boundaries" of the United States and Canada for banks and securities firms of both nations. Earlier this month, when the ABA became aware that the financial services provisions of the treaty would be forwarded to the Senate Banking Committee, we forwarded a copy of this joint communication to Chairman Proxmire and to Senator Garn. (letters attached) As the joint letter states, ..."this opening of our markets should enhance competitive opportunities for both nations' institutions. It may also serve to strengthen the competitive effectiveness of our institutions in the face of inroads from financial institutions from foreign countries."

The U.S. - Canada Free Trade Agreement cannot be viewed simply as a bilateral agreement between the world's two largest trading partners, with more than $135 billion in annual commercial exchanges, to construct the world's largest shared market. While the Agreement is of momentous significance on those grounds alone, it may also be viewed as a model for adjusting trade in financial services to the realities of marketplace globalization which has already arrived and is certain to grow dramatically.

Two months ago, Arthur Andersen and Company released a new report entitled "The Globalization of the International Financial Markets: Implications and Opportunities". The major conclusion of this study, with which we fully concur, is the following: "We believe that globalization of the financial markets is not a myth - it is a reality that is here to stay." As evidence for this proposition, the study cites the fact that 22 percent of all U.S. corporate bond financings ($44 billion) were conducted abroad in 1986; that U.S. investors purchased a record $102 billion of foreign equities in 1987 while foreign investors in that same year purchased and sold $277 billion in U.S. equities; and that large U.S. corporate customers now borrow nearly 30 percent of their funds from foreign banks, while all U.S. businesses receive one-fifth of their loans from foreign banks.

The Andersen study also makes the important observation that globalization is not being driven by financial institutions or their regulators, but by the "users" of financial services - that is, by industrial and commercial firms, quasi-public and public entities, entrepreneurs, and other parties who issue financial instruments or utilize the primary, secondary, and private financial marketplaces.

U.S. commercial banks and all other U.S. financial providers face a significant challenge to be effective competitors in the global financial marketplace, separate and apart from the greater challenge of retaining a leading U.S. role in financial services. Certainly, the U.S. still retains a lead in product development, technology, and breadth and liquidity of markets. But this Committee is well aware that the ranking of U.S. banks in terms of both assets and deposits has declined dramatically over the past decade, particularly in comparison to the banks of Japan. The challenge of retaining leadership appears even more formidable when market valuation is considered. Market valuation translates into the capacity to undertake new research and make strategic acquisitions. Of the world's fifty largest financial institutions in terms of market valuation in 1986, twenty-seven were Japanese while only eleven were U.S. companies. The first sixteen firms ranked by market capitalization are all Japanese, ranging from Nomura Securities ($59 billion) to Mitsui Trust and Banking Company ($19 billion). By comparison, the largest U.S. diversified financial company, American Express, had $16 billion; the largest U.S. insurance company, American International Group, had $12 billion; and the highest valued U.S. banking corporation, J. P. Morgan, had $8 billion.

In the global financial marketplace, protectionism in financial services is not a rational defense but a formula for permanent second-class status. But policies aimed at increasing institutional efficiencies, enhancing competitiveness, and attracting new capital resources can be a major part of an effective overall response to today's global challenge. Our Japanese competitors make no secret of the fact that they and their regulators view financial structure, including the evolving deregulation of Japanese financial institutions, as a strategic aspect of their overall trade policy.

Financial services is clearly an area where the United States can retain world leadership. Strength in financial services can assist all other U.S. economic sectors in achieving their aspirations in international trade. To the extent that the U.S. - Canada Free Trade Agreement helps to establish a more efficient North American economic marketplace it will contribute greatly to the continued vitality of U.S. financial institutions.

The economic status of the banking system generally reflects the well-being of the economy it serves. In-as-much as it is generally anticipated that the Agreement's ratification and implementation will enhance the economic health of both nations, banks will be the indirect recipients. But the Agreement also provides many direct benefits to both U.S. and Canadian banks. In general, it recognizes the growing interdependence of the international economy by pledging both nations to undertake the elimination of discriminatory policies against their respective financial institutions and to replace them with improved access and new competitive opportunities consistent with prudential and regulatory requirements.

The key elements of the agreement regarding financial services which benefit U.S. banks are as follows:

1. U.S. citizens and U.S. companies will receive treatment as favorable as Canadian individuals and firms with respect to the ability to purchase shares of Canadian financial institutions.

2. U.S. bank subsidiaries, individually and collectively, will be exempted from the limitations otherwise applicable to total Canadian assets of foreign bank subsidiaries.

3. Canada has agreed not to utilize its review powers governing the entry of U.S. financial institutions in a manner inconsistent with the Agreement.

4. Canada agreed to continue to provide U.S.-controlled financial institutions established under Canadian law with the rights and privileges they now have, subject to the U.S. commitment to consult with Canada and to liberalize further the rules governing its financial market and to extend the benefits of such liberalization to Canadian financial institutions established under U.S. law.

For its part, the United States has made the following pledges:

1. Domestic and foreign banks will be permitted to engage in the dealing in, underwriting, and purchasing of debt obligations backed by the full faith and credit of Canada and its provinces or political subdivisions to the same extent that they are permitted to engage in these activities for U.S. debt obligations.

2. The U.S. agreed to guarantee the right of Canadian banks to retain their multi-state branches grandfathered under the International Banking Act of 1987.

3. The U.S. agreed to accord Canadian financial institutions equivalent treatment to U.S. financial firms under Glass-Steagall reform and associated legislation.

4. The U.S. agreed to continue to provide Canadian-controlled financial institutions established under the laws of the United States with the rights and privileges they now have on the same terms as apply to Canada's reciprocal pledge.

In essence, the agreement frees U.S. banks and other financial institutions operating within Canada from most current restrictions on market share, asset growth, and capital expansion imposed against other foreign firms. The agreement will abet continued integration of these two financial marketplaces and allow financial firms from both sides of the border to compete on a more equal basis.

U.S. banks will not be the only beneficiaries. U.S. securities firms will also receive the ability to diversify into other financial activities within Canada. And U.S. insurance firms will receive the

same rights as Canadian insurance companies to diversify through establishment or acquisition of federally regulated insurance and trust companies or closely held banks. Similarly, U.S. commercial banks will be permitted to establish or acquire securities firms or Canadian insurance and trust companies in the same manner and to the same extent as Canadian banks.

Mr. Chairman, we want to particularly emphasize that the agreement contemplates Glass-Steagall reform and commits both nations to further liberalize their financial markets and to extend the benefits of this liberalization to the financial institutions of both nations. To this end, a formal consultative mechanism has been established between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee such liberalization and to resolve any disputes arising from commitments concluded in the Free Trade agreement. Even in advance of the agreement's ratification, the Senate has implemented a vital part of this commitment to liberalization through its overwhelming 94 to 2 passage of the Proxmire Financial Modernization Act on March 30. The Glass-Steagall reforms contained within that legislation, if enacted, will permit Canadian banks which have registered as bank holding companies within the United States to enjoy the same ability to underwrite securities as is already enjoyed by several U.S. banks in Canada, which will remove all its remaining limits on foreign ownership of securities dealers next month.

Unfortunately, the insurance restrictions contained in the Proxmire Act will leave the United States marketplace far behind the Canadian. The fact that the Act's insurance restrictions apply equally to both U.S. and Canadian banks is of small consolation. While Canada will be providing U.S. banks and U.S. insurance firms with the ability to cross-affiliate with Canadian insurance firms and banks on a nationwide basis, the Proxmire Act's restriction will prevent a Canadian bank with U.S. operations from engaging in broad insurance activities in more than a single state, even where other states have chosen to authorize such affiliations. It is our hope that, in a spirit consistent with the commitments of the agreement, the House may liberalize these provisions of the Senate bill and adopt language which is in the best interest of the consumers of both nations and which enhance progress and competition.

Before concluding, I would likely to briefly address another aspect of the Agreement's provisions regarding insurance. The Agreement identifies the business of underwriting and selling insurance as an activity which is covered by its general services chapter, whereas financial services offered by insurance companies are addressed by its financial services chapter. As we understand it, this bifurcated treatment reflects ongoing financial market reform within Canada. By the time the agreement goes into force, insurance companies in Canada will be permitted to diversify through acquisition or merger with practically any other kind of institution, including banks. U.S. insurance companies will have the same opportunities as Canada liberalizes its financial market-place.

It is our understanding that some elements of the U.S. insurance industry have raised the concern that a U.S. bank may be able to avoid current internal U.S. restrictions on insurance activities through acquisition of a Canadian insurance company. Our reading of the agreement is to the contrary. While the ABA remains committed to the eventual revision of laws and regulations within the United States to permit the establishment of financial service holding companies, the Agreement does not permit such entities to be established through any back door and it would not be proper if it did so. The law of each nation will continue to determine the permissible activities of respective financial institutions; the Agreement's only effect will be to bar discrimination against the firms of each nation have vis-a-vis domestic counterparts.

Again, the ABA believes that current restrictions on the ability of U.S. banks to affiliate with insurance companies in the United States are detrimental to economic efficiency, consumer interests, and overall competitiveness. But the Agreement does not in any way affect these restrictions. Canadian banks will soon be able to engage in insurance activities within their home nation. U.S. banks will also be able to take advantage of this option, just as they are already permitted to engage in unlimited insurance activities in such major financial centers as France, Germany, Hong Kong, and the United Kingdom, and to sell insurance in the Netherlands. While leadership has passed our nation by in this area, perhaps we can soon at least catch up.

In conclusion, the ABA strongly supports the U.S. - Canada Free Trade Agreement and urges rapid approval of implementing legislation. Cross-border banking activities between our two nations are already significant. The six large domestic Canadian banks have maintained offices in the United States for as long as century and held U.S. assets totaling about $40 billion at the end of 1985, representing about a 2.5 percent market share. The seventeen U.S. owned foreign bank subsidiaries in Canada had smaller total assets in that period, about $12 billion, but this represented a greater market share of about 4 percent. A more fully developed integration of the financial systems of both nations will be in the best interest of those institutions and the economies they serve, particularly if both nations follow through with liberalized domestic restructuring that permits greater freedom of affiliation between banks, securities underwriters, and insurance firms.

This concludes my testimony. I would be pleased to answer any questions. Thank you.

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

EXECUTIVE DIRECTOR
GOVERNMENT RELATIONS
Edward L. Yingling
202 663 5328

May 11, 1988

The Honorable William Proxmire
United States Senate
530 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to inform you of the support of the American Bankers Association (ABA) for ratification of the United States-Canada Free Trade Treaty. The financial services provisions of the Treaty would provide banks and securities firms freedom to compete essentially as national entities of the respective countries.

I am attaching, for your information, a joint letter from the ABA and Canadian Bankers' Association recently sent to the Committee on Foreign Relations which sets forth the full joint position of the two trade associations.

Please feel free to contact me if I can provide any further information regarding our support for ratification of the Treaty.

Sincerely,

Edward L. Yingling

EL Y:mrs
Attachment

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

EXECUTIVE VICE PRESIDENT
Donald G. Ogilvie
202 663 5011

April 19, 1988

Mr. Claiborne Pell
Chairman
Committee on Foreign Relations
United States Senate
SDOB-423
Washington, D.C. 20510

Dear Mr. Chairman:

The American Bankers Association and the Canadian Bankers' Association are writing to support ratification of the United States-Canada Free Trade Treaty. Under the terms of the Treaty affecting financial institutions in our respective countries, banks and securities houses would be given freedom to compete essentially as national entities of the respective countries.

This equality of treatment within the national boundaries will, for the first time, create a legal regime under which the financial institutions of two countries can fully serve their own customers in their own countries as well as those in each other's. This opening of our markets should enhance competitive opportunities for both nations' institutions. It may also serve to strengthen the competitive effectiveness of our institutions in the face of inroads from financial institutions from foreign countries.

We therefore write to support the United States-Canada Free Trade Treaty and urge that it be ratified.

Sincerely,

Donald G. Ogilvie
Executive Vice President
American Bankers Association

Robert M. MacIntosh
President
Canadian Bankers' Association

THE U.S.-CANADA FREE TRADE AGREEMENT

Testimony of Robert D. Hormats,
Vice Chairman, Goldman Sachs International Corp.

Before the Senate Banking Committee

May 20, 1988

I am pleased to have the opportunity to testify before the Senate Banking Committee on the historic trade agreement between the Governments of the United State and Canada.

As a former Deputy United States Trade Representative and Assistant Secretary of State for Economic and Business Affairs, I have had the opportunity to engage in a wide range of economic negotiations with my Canadian counterparts. These negotiations were not always easy; and agreement was often elusive. But on virtually all occasions, they were based on the premise that because our two nations -- the closest of economic partners and allies -- had so many economic linkages, and our prosperity was so intertwined, a period of prolonged disagreement, or a resort to protectionism against one another, was unacceptable to both sides.

This Free Trade Agreement -- for which the leaders of both nations deserve much credit -- underscores that point. It it confirms what the American and Canadian private sectors have understood for some time -- that they are economically better off if our nations can broaden and deepen economic relations and reduce business uncertainties.

The major competitors we, in the U.S. and Canada, face are rarely in North America, but across the Pacific and Atlantic; broadening the access of firms in Canada and the U.S. to this vast North American market can strengthen the ability of each nation's industries, farms and financial institutions to compete with European and Asian counterparts. The Europeans have recognized that their own competitive strength will be enhanced by eliminating impediments to internal trade, labor movement, and capital mobility -- a goal they have set for 1992. The U.S.-Canadian agreement recognizes the same point.

The Canada-U.S. agreement establishes a framework of legal and procedural agreements which further open trade and investment between these two nations, provide ways to resolve differences, and expand commercial and financial relations.

One of the many strengths of the agreement is that it covers financial services and investment -- which marks the first major trade agreement to do so. Indeed, precedent in this area can strengthen the hands of American and Canadian negotiators to obtain similar results in the Uruguary round of the global trade negotiations.

Specifically:

The agreement exempts American commercial bank subsidiaries from Canadian limitations on market share, asset growth and capital expansion just as Canadian banks are free from such limits in Canada. U.S. commercial banks will also be permitted to establish or acquire securities firms, or federally-regulated Canadian insurance and trust companies, also in the same manner as Canadian banks in Canada.

U.S. insurance companies will receive the same rights as Canadian insurance companies to diversify in the Canadian financial sector by establishing or acquiring federally-regulated insurance companies, securities firms, or certain types of banks.

Applications for American securities firms for entry into Canada will be reviewed by Canadian authorities on a prudential basis, just as is done for Canadian firms, rather than on a reciprocal basis. And U.S. securities firms operating in Canada will have the ability to diversify through a holding company structure into other financial activities such as banking and insurance.

I might add at this point that as a member of a securities firm now operating in Canada, we have found the reception to be very warm. We have much appreciated the assistance given us by the Department of Finance, the Bank of Canada, and the Province of Ontario. Naturally there are areas where problems arise in settling in; but they have been addressed in a constructive way by authorities in Ottawa and Toronto -- and we believe that any further concerns can be addressed in a similar spirit.

The aim of Goldman Sachs Canada is to play a constructive role in the Canadian financial market. We want to be good corporate citizens of Canada. We believe that a thriving Canadian economy and a vigorous financial market is good for our long run business, and that if we perform responsibly, add liquidity to that market, and provide valuable services to our Canadian clients and our international clients, whom we help to invest in Canadian securities, we can be of benefit to Canada and realize profitable business as well.

The agreement also provides benefits for Canadian financial institutions in the U.S.:

Canadian banks (which now own many of the country's securities firms) will be permitted to underwrite debt obligations fully backed by the Government of Canada and the Canadian provinces; this includes the Crown Corporations, which are important borrowers. This arrangement is consistent with the existing ability of banks in the U.S. to underwrite, and deal in, securities of the U.S. Government.

The U.S. also agreed to continue the current treatment provided to Canadian financial institutions established in the U.S. so long as Canada continues to liberalize its financial markets and to extend the benefits to U.S. financial institutions.

The agreement also establishes a consultative mechanism which permits both sides to ask for consultations on any matters that relate to the agreement -- including specific undertakings by either side, and general commitments to proceed

further with domestic financial liberalization. Because both nations are considering further liberalization of financial markets, this procedure will help to ensure that the benefits of the agreement would be extended to institutions of the other country.

It is, of course, impossible to determine the precise quantitative benefits of this agreement for either nation's financial industry. But the basic point is that each has new opportunities in the other country, and each country has now committed itself to maintain the commitment of non-discrimination as its regulations evolve. To be sure, neither nation got everything it wanted -- but few negotiations yield full satisfaction. For instance, both sides were unable to agree on a definition of "national treatment" in the financial services area. But the consultative mechanism should help to resolve, in a practical way, major differences in this area.

In every agreement of this sort some sectors gain and others lose. But the preponderance of the evidence is that on balance the private sector of both countries come out winners in this agreement. Each nation's companies will have broader markets and greater confidence about the conditions of doing business in the other country.

This is not an agreement among accountants -- the winners and losers in which can be calculated strictly on the basis of dollar balances. It is an agreement which will take both nations into the twenty-first century as stronger trading partners and improve the global competitive prospects of the large majority of their companies and financial institutions.

Senator DIXON. Thank you, Mr. Hormats, for your brevity and your conciseness.

Now, we will hear from Mr. Peter Lefkin, counsel for the American Insurance Association.

Mr. Lefkin.

PETER A. LEFKIN, COUNSEL, AMERICAN INSURANCE ASSOCIATION

Mr. LEFKIN. Thank you, Senators Dixon and Graham. I am Peter Lefkin. I serve as Federal affairs counsel to the American Insurance Association.

We are pleased to have the opportunity to testify before the Banking Committee on some of the issues relating to the treatment of financial services in the United States-Canada Free Trade Agreement.

Our companies have had a longstanding interest in the issue of liberalized trade, and many insurers are already engaged in extensive internat of the world that the United
States is serious in its commitment to the elimination of trade restrictions.

We do have some concerns about some of the provisions in the pact which we would like to share with this panel. We are also confident that these can be allayed in the implementing legislation.

In addressing chapter 17, Financial Services Provisions, I want to emphasize at the outset that it does contain a number of very beneficial items. Among other things, it eliminates the 10/25 rule, which keeps U.S. insurers from owning Canadian life insurance firms, and also extends the national treatment principle to U.S. companies doing business in Canada, and thereby ensuring that U.S. insurers have equal access and equal treatment under Canadian law.

Now, as the committee is undoubtedly aware, the language throughout the Trade Agreement is somewhat vague and could give rise to protracted litigatory proceedings. One area which gives rise to insurers' concern is section 1703(4) of the Agreement, which requires that the Canadian Government extend the rights conferred upon their domestic companies to deregulate their activities to American companies doing business in that country's marketplace.

It is probably being debated in the same intensity in Canada and the same argument that has been before this committee over the years on the subject of deregulation, and we remain concerned that it not be used as an argument for deregulation by U.S. banks which engage in insurance activities in Canada.

One example which presents itself is whether or not a U.S. bank holding company can purchase an insurance subsidiary in Canada, which would then be empowered to export their insurance underwriting and sales activities into the United States.

Now, we have received assurances from representatives of the administration that this would be prohibited from occurring. How-

ever, as this committee knows, perhaps better than any other in Congress, banks will go to great lengths to expand their operations.

We do not want another protracted court battle.

Senator DIXON. This sounds familiar to me. [Laughter.]

Mr. LEFKIN. We don't want to have to come before this committee in 1993 looking for another loophole closing law. I am sure you don't want to see us here at that time either.

Therefore, we would ask that the Congress adopt statutory language which would make certain that the Trade Agreement does not become a backdoor approach to expand bank powers in the United States.

Another issue that presents itself to this committee is how the measure comports with S. 1886.

Senator GRAMM. Mr. Lefkin, I am going to have to leave to preside at 11 o'clock, and I don't want my departure to indicate my lack of continuing interest in esoteric qualities of obfuscation of the financial service industry.

Mr. LEFKIN. Thank you, Senator Gramm.

Senator GRAMM. A subject of continuing interest to all of us. [Laughter.]

Mr. LEFKIN. Under the bill which passed the Senate, a bank holding company could engage in insurance activities if they are authorized by the State which is the principal place of business for the bank holding company.

This would undoubtedly provoke Canadian banks to assert that S. 1886 does not accord them national treatment, since their ability to engage in insurance activities is conditioned on a factor other than prudential, fiduciary, or consumer protection reasons.

While the agreement changes nothing, the status quo, some issues may need clarification, and here the insurance industry wants to make certain that the Agreement does not provide a backdoor way for a greater role of the Federal Government in the regulation and taxation of insurance.

I want to reiterate the support of AIA to the Free Trade Agreement. The concerns we have raised today have been raised before with Treasury and with Commerce, and they have repeatedly assured us that no hidden agenda exists to allow the Agreement to expand bank powers or increase the role of Federal Government to regulate the business of insurance.

We take comfort by this fact, and we know the best way to avoid confusion and conflict in the future is to specify in some degree of detail that which you are intending to do today.

It is our hope that the Senate and the House will come forward with implementing legislation that takes care of some of the problems we have raised.

Thank you.

[The complete prepared statement of Mr. Lefkin follows:]

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

BEFORE THE

SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

CONCERNING

INSURANCE ISSUES RELATING TO THE U.S.-CANADA

FREE TRADE AGREEMENT

MAY 20, 1988

American Insurance Association

The American Insurance Association is a national trade organization of casualty insurers.

PROFILE

The American Insurance Association is a full-service trade organization of casualty insurance companies. In its present form, the association combines three earlier organizations. One of those, the former National Board of Fire Underwriters, was organized in 1866, making it one of the oldest trade associations in the nation.

The various departments provide members with up-to-date intelligence on legislative, regulatory, judicial and technical developments relating to our industry. The AIA also maintains liaison with insurance regulators, federal and state lawmakers, other state and federal government officials, insurance and non-insurance industry groups and media—supplying information and assistance on issues of mutual concern.

A countrywide system of regional offices and local legislative counsel ensures prompt and rigorous attention to casualty insurance matters. At the same time, technical specialists from disciplines as diverse as law, economics and engineering educate members and outside publics on developments that may affect the industry and its services to the insurance-buying public.

The American Insurance Association (AIA) is a trade association comprised of more than 183 property and casualty insurance companies that provide the majority of the commercial liability coverage written throughout the United States. We are pleased and honored to have the opportunity to testify on Chapter 17 of the U.S.-Canada Free Trade Agreement as it relates to financial services.

Our companies have had a long standing interest in the issue of liberalized trade. Many insurers already are engaged in extensive international operations and have made a strong financial commitment to expand their overseas markets. We believe that the promotion of international trade in services is important to the vitality of the American economy in the future.

The AIA strongly supports the U.S.-Canada Free Trade Agreement. We believe that it sets an important example to the rest of the world that the United States is serious in its commitment to eliminate trade restrictions. Nevertheless, we do have some concerns with some of the provisions in the pact but are confident that these can be allayed in the implementing legislation.

Financial Services Provisions

Chapter 17 of the Agreement contains several elements that would liberalize trade between the two countries and eliminate existing barriers to foreign ownership of financial institutions.

From the perspective of the U.S. insurance industry, the waiving of the so-called 10/25 Rule is of immediate significance. This is a Canadian law which bars a U.S. insurer from owning more than 10 percent of a Canadian financially-chartered life insurance firm. Total foreign ownership from a group of non-related companies is limited to 25 percent. Under the agreement, these ownership restrictions have been eliminated and American companies seeking to purchase an insurer in Canada will be accorded national treatment.

U.S. insurers believe that the national treatment principle should be the premise for future bilateral relations. This principle guarantees that once admitted to the Canadian insurance market, U.S. insurers will get nondiscriminatory treatment under any new federal, provincial, or state law or regulation which is established by the other country. The Agreement permits departures from national treatment for reasons related only to prudential, fiduciary, or consumer concerns. The burden of proof for the exception lies with the country that seeks it. While the national treatment principle applies only to future laws and regulations, the provision assures U.S. insurers equal access and equal treatment under Canadian laws.

Restrictions on the insurance industry often take the form of domestic regulations and practices that act as nontariff barriers. Article 1704 guarantees that the principle of transparency will be adhered to by requiring that each party make

subject to formal notice and comment any legislative proposals or regulations which may be covered by the Agreement. As is usually the case with a document as broad as the Free Trade Agreement, it is somewhat vague and the insurance industry hopes that the intentions of signatory parties are specified in greater detail in the implementing legislation. We believe that by taking such action now we can avoid legal difficulty in the years ahead.

Perhaps the most important issue for insurers is that the U.S.-Canada Agreement not become a wedge for financial deregulation in the United States. In 1987, the Canadian government effectively suspended its law, similar to the Glass-Steagall Act, which prohibited the common ownership of banks and securities firms. Future deregulatory proposals are now being contemplated which would have the effect of breaking down all barriers which may exist between banks and insurance underwriting and sales. Under Section 1703 (4) of the Agreement, the Canadian government is required to extend the rights conferred upon their domestic companies to deregulate their activities to American companies doing business in that nation's marketplace.

This is not the forum to discuss the potential benefits and ancillary problems that would result from financial deregulation in Canada. Suffice it to say that this issue is probably being debated there with many of the same arguments that have been brought forward to this committee over the years. Suffice it also, that financial institutions of all types will avail

themselves of the expanded powers being contemplated under the Canadian law, as they have done in other countries which have moved to deregulate their financial marketplace.

Insurers have concerns about how the U.S.-Canada Free Trade Agreement would comport with S.1886, the Proxmire Financial Modernization Act. Under the bill which passed the Senate in early April, a bank holding company would be allowed to engage in the business of insurance provided that two conditions are met: 1) the activity is authorized by the state; and 2) the state which confers the authority is the principle place of business for the bank holding company.

Clarification is needed about how Canadian insurers would be treated under the Agreement. They would appear to be prohibited from engaging in insurance activities in the United States since they would not meet the principle place of business test established under S.1886. This would undoubtedly provoke Canadian banks to assert that S.1886 does not accord them national treatment since their ability to engage in insurance activities is conditioned on a factor other than prudential, fiduciary or consumer protection reasons.

Another related concern of insurers is whether or not a U.S. bank holding company could purchase an insurance subsidiary in Canada which would then be empowered to export their insurance underwriting and sales activities to the United States. While

assurances have been made from representatives of the Administration that this would not be the case, insurers nonetheless remain concerned about this possibility. This committee, perhaps more than any other in Congress, remains cognizant about how banks will use obfuscatory statutory language and legislative history to support their efforts to expand their insurance and securities operations. To avoid having to litigate another protracted court battle, and perhaps another visit to this committee to ask for a loophole closing bill, we would urge you to come forward with statutory language which would make certain that the Trade Agreement does not become a back door approach to expanded bank powers in the United States.

Other Areas of Concern

We would also like to provide our perspective on some of the other chapters in the Agreement. We can think of a scenario where rules promulgated by state insurance commissioners are viewed to be at variance with Chapter 14 of the Agreement. Under the McCarran-Ferguson Act, the regulation and taxation of the business of insurance resides with the individual states, not with the federal government. While the Agreement on its face would do nothing to change the status quo, a few issues may need further clarification.

Article 1402 requires that both parties be accorded treatment no less favorable than the most favorable treatment accorded by a

state or province to a national citizen, i.e., national treatment. In other words, commissioners would not be allowed to discriminate against Canadian insurance companies but they would be allowed to differentiate. Exceptions are allowed provided that the difference in treatment is no greater than that which is necessary to protect the interest of consumers.

As a practical matter, even without the Agreement, state insurance commissioners provide for national treatment of alien and foreign insurance companies and are unlikely to make substantial distinctions between those companies whose principal place of business is inside or outside the United States.

Nevertheless, some companies have concerns that the Agreement could provide a backdoor way for a greater role of the federal government in the regulation or taxation of the business of insurance. Here again, we have received verbal assurances from the Administration that they do not intend to intrude upon the traditional state prerogative. We believe, however, that language may be appropriate to clarify the effect of the Agreement.

Finally, while the Agreement rolls back a number of Canadian barriers on ownership, several less significant discriminatory restrictions on U.S. companies remain that ought to be removed in future negotiations.

Senator DIXON. Thank you, Mr. Lefkin.

I think you were in the audience when we were asking questions of the prior panel. We are trying to clarify all of this so that there is no disagreement or misunderstanding ultimately of what is done.

Thank you very much.

Does my distinguished colleague, Senator Bond, have a statement for the record?

Senator BOND. Yes. I am sorry, I had an appointment that kept me from being here for the discussion by this distinguished panel, and I would like to submit this for the record.

The CHAIRMAN. The Senator's statement will be placed in the record in full.

[The complete prepared statement of Senator Bond follows:]

5/20/88

PREPARED STATEMENT OF SENATOR BOND

Mr. Chairman, the U.S.-Canada Free Trade Agreement which we are discussing today, represents a true milestone in the history of trade negotiations. The agreement to eliminate tariffs and liberalize trade between the world's two greatest trading partners is a major step in the direction of global free trade. It serves as a standard for the current round of GATT negotiations -- particularly in the services sector; and it can serve as a model for future bilateral free trade agreements.

It appears that the agreement, if it is implemented, will work to the benefit of both countries -- creating jobs and boosting economic growth. Of course, we are all aware that certain sectors of each nation's economy will suffer disproportionately, while others will so benefit. I believe we must work to ease the impact on significantly-affected sectors, while at the same time, ensuring that non-tariff barriers and government subsidies are, in fact, eliminated.

Today we are discussing what I consider to be one of the most promising sections fo the agreement -- the one relating to financial institutions. American banks, securities firms and insurance companies have much to offer to the Canadian market. The expanded ties between U.S. and Canadian institutions will be beneficial to both countries.

I look forward to hearing the statements of the witnesses, and discussing these matters with them further.

Senator DIXON. And we go to our final panelist, Mr. Ruth.

DAVID RUTH, DIRECTOR, INTERNATIONAL CORPORATE AFFAIRS, AMERICAN EXPRESS CO.

Mr. RUTH. Thank you, Mr. Chairman.

I am pleased to be here today on behalf of my own company, American Express, as well as the American Coalition for Trade Expansion with Canada, which is a group of more than 560 companies and business associations that have joined together for the sole purpose of supporting the United States-Canada Free Trade Agreement.

My own company's support for the FTA is based on several considerations.

First, American Express operates today in more than 150 countries. All of our businesses—charge cards, travel, banking, asset management, securities, data processing—rely on a healthy and growing international trade environment, defined as the freest possible movement of ideas, information, goods, and people internationally. A liberal environment for international trade is good for our business. The United States-Canada Free Trade Agreement advances that cause significantly.

We are particularly pleased that the FTA addresses trade in services—the first time in any major international trade agreement. My company has long advocated the establishment of a multilateral agreement on services in GATT. The United States-Canada Agreement is an important first step toward this goal.

GUARANTEES OF NATIONAL TREATMENT

Specifically, the Agreement provides for guarantees of national treatment, right of establishment, and access to domestic distribution systems for some 150 specified service sectors, including agricultural and mining services, construction, insurance, wholesale and retail trade, management services and other business and professional services.

Under the FTA, such services can be provided without a commercial presence in the country. In addition, sectoral annexes are included for architecture, tourism, and computer services and telecommunications-network-based enhanced services. This overall framework provides a very positive, strong foundation on which to develop a multilateral agreement in the Uruguay round.

From my own company's viewpoint, the United States-Canada Agreement provides some specific benefits for our current and future business with Canada. American Express services have been sold in Canada for 100 years. After the United States, Canada is the second largest market for American Express Cards. The services agreement gives us long-term guarantees that this and other American Express businesses in Canada will continue to get equal treatment and unobstructed access to Canada.

One of the major gains of the Free Trade Agreement was the chapter eliminating many of Canada's barriers to U.S. financial services. When it comes to the treatment of foreign financial services firms, Canada has been one of the most restrictive countries in the world. There were severe restrictions on the ownership of Ca-

nadian financial institutions by foreigners. Canada restricted foreign banks to a small share of the market and imposed prohibitive restrictions on asset growth. And there was a real possibility that, as Canada moved to liberalize its own regulatory system, U.S. financial firms would not be accorded equal powers to expand and diversify.

The financial services agreement substantially eliminates these problems, giving U.S. financial services companies the ability to establish, diversity and expand on roughly the same basis as Canadian financial institutions. It frees U.S. bank subsidiaries from current limits on market share and asset growth. It eliminates many Canadian restrictions on foreign ownership in banks, insurance, and trust businesses in Canada, and it allows U.S. financial companies to diversify into different financial services on the same basis as Canadian firms.

The fourth point, and probably the most important, was touched on by an earlier panelist. Our customers will benefit from the agreement. In short, what is good for American business is good for American Express.

The elimination of tariffs and nontariff barriers, the liberalized investment rules, access to energy markets and supplies, among other things, all point to a much greater efficiency, prosperity, and new opportunities for companies and the American economy as a whole.

Finally, I would point to the effects on the multilateral negotiations. The Free Trade Agreement sets an excellent tone, example for progress at the multilateral level. It breaks new ground for services, financial services and investments, all of which are going to be hotly debated in GATT.

Conversely, all of these benefits to the U.S. financial services industries in the U.S. economy would be lost if the Agreement is not approved. We will have missed an historic opportunity that is not likely to come around again very soon.

We therefore strongly urge your support.

Thank you.

[The complete prepared statement of Mr. Ruth follows:]

Among other things, Canadian law requires that 100 percent of the assets backing the Canadian liabilities of foreign insurers be Canadian. This compares with a 66 percent requirement for domestic Canadian companies. Canadian authorities also apply discriminatory valuation methods to the assets of foreign insurance companies. During periods of declining asset values, foreign companies are required to immediately offset the full loss through an increase in the amount of assets held in trust. Canadian companies, in contrast, are allowed to amortize their losses in asset value over a three year period of time. In addition, the Ontario Insurance Act and the Ontario Registered Insurance Brokers Act preclude non-residents from owning insurance agencies or brokerage houses and prevent them from being licensed in the Province. Finally, Canadian law imposes restrictions by Canadian pension funds outside of Canada.

We are hopeful that both countries will continue to address the issues left unresolved by the Agreement.

Conclusion

The American Insurance Association suppprts the U.S.-Canada Free Trade Agreement. Nonetheless, we have some concerns that this accord not be used as a wedge for financial deregulation in the United States. We have discussed this matter with officials in the Treasury and Commerce Departments who have assured us that it is not the intention of the Agreement to create a body of federal

law which would supercede state insurance regulation. While comforted by the fact that no fundamental disagreement would appear to exist, we are wise enough to know that the best way to avoid confusion and conflict in the future is to specify in some degree of detail that which you are intending to do today. It is our hope that the Senate and House will come forward with implementing legislation that provides a clarification of some of the problems that we have identified throughout our testimony.

Respectfully submitted,

Peter A. Lefkin

STATEMENT ON THE U.S.-CANADA FREE TRADE AGREEMENT

David A. Ruth

Director, International Corporate Affairs

American Express Company

Before the

Committee on Banking, Housing, and Urban Affairs
United States Senate

May 20, 1988

Mr. Chairman and members of the Committee, I am pleased to be here today on behalf of my own company, American Express, as well as the American Coalition for Trade Expansion with Canada. ACTE-CAN is a coalition of more than 560 companies and business associations that have joined together for the sole purpose of expressing support for the U.S.-Canada Free Trade Agreement. These members include large, medium and small businesses from a wide range of sectors and virtually every region of the country.

In fact, the U.S.-Canada Trade Agreement has produced a unanimity of view in the U.S. business community that is almost unique.

My own company's support for the FTA is based on several considerations. First, American Express operates today in more than 150 countries. All of our businesses -- charge cards, travel, banking, asset management, securities, data processing -- rely on a healthy and growing international trade environment, defined as the freest possible movement of ideas, information, goods, and people internationally. A liberal environment for international trade is good for our business. The U.S.-Canada Free Trade Agreement advances that cause significantly.

We are particularly pleased that the FTA addresses trade in services -- the first time in any major international trade agreement. My company has long advocated the establishment of a multilateral agreement on services in GATT. The U.S.-Canada Agreement is an important first step toward this goal.

Specifically, the Agreement provides for guarantees of national treatment, right of establishment, and access to domestic distribution systems for some 150 specified service sectors, including agricultural and mining services, construction, insurance, wholesale and retail trade, management services and other business and professional services. Under the FTA, such services can be provided without a commercial presence in the country. In addition, sectoral annexes are included for architecture, tourism and computer services and telecommunications-network-based enhanced services. This overall framework provides a very positive, strong foundation on which to develop a multilateral agreement in the Uruguay Round.

From my own Company's viewpoint, the U.S.-Canada Agreement provides some specific benefits for our current and future business with Canada. American Express services have been sold in Canada for a hundred years. After the United States, Canada is the second largest market for American Express Cards. The services agreement gives us long term guarantees that this and other American Express businesses in Canada will continue to get equal treatment and unobstructed access to Canada.

One of the major gains of the Free Trade Agreement was the chapter eliminating many of Canada's barriers to U.S. financial services. When it comes to the treatment of foreign financial services firms, Canada has been one of the most restrictive countries in the world. There were severe restrictions on the ownership of Canadian financial institutions by foreigners. Canada restricted foreign banks to a small share of the market and imposed prohibitive restrictions on asset growth. And there was a was a real possibility that, as Canada moved to liberalize its own regulatory system, U.S. financial firms would not be accorded equal powers to expand and diversify.

The financial services agreement substantially eliminates these problems, giving U.S. financial services companies the ability to establish, diversify and expand on roughly the same basis as Canadian financial institutions. It frees U.S. bank subsidiaries from current limits on market share and asset growth. It eliminates many Canadian restrictions on foreign ownership of banks, insurance, and trust businesses in Canada, and it allows U.S. financial companies to diversify into different financial services on the same basis as Canadian firms.

This is a significant achievement and one which has implications for the global competitiveness of the U.S. and Canadian financial services industries. Financial markets around the world are becoming globalized, and financial institutions are finding that in order to remain competitive, they have no choice but to become strong internationally. Japanese firms have become world class competitors in the financial services field. The European Community is moving steadily toward the elimination of internal market barriers by 1992, which will eliminate restrictions on capital flows and allow for much more cross-border trade in financial services within the Community. European integration will offer European companies tremendous competitive advantages.

By allowing for greater competition and efficiency in the North American financial services market, the FTA provisions on financial services will help us meet these global challenges.

The Agreement should be seen only as a first step; the beginning of a long-term process of aggressive trade liberalization between the two countries. As with other parts of the agreement, there is more work to be done in the financial services arena. Both sides have agreed that this bilateral process must continue and that the benefits of future liberalization in each country should be extended to the other.

The benefits to the financial services industries of Canada and the U.S. extend well beyond the specific financial services provisions. By eliminating tariffs and nontariff barriers, freeing up investment flows, establishing a free market in energy, and eradicating a wide range of other barriers, the agreement will eliminate inefficiencies and create new opportunities in industries and sectors throughout the United States. In short, when our customers win, we in the financial services industry win too.

The FTA has emerged at a time when the world's trading nations are about to face up to some hard decisions in the Uruguay Round of multilateral trade negotiations. The U.S.-Canada Agreement gives a substantial boost to the Uruguay Round process. It shows how trade rules can be extended to important new areas -- like services and investment. More importantly, it sends the signal that the U.S. is willing and able to pursue bilateral channels for opening up world markets if our multilateral trading partners are unwilling to make the necessary progress in GATT.

U.S. competitiveness in world markets is showing marked signs of recovery. Will we capitalize on our rediscovered vitality by aggressively moving to open up foreign markets -- as we have with Canada -- and by facing up to the essential challenge of global competition? If we do not, we can only find ourselves more vulnerable, with fewer bargaining chips in the future. I believe that approval of the FTA sends the right message -- that the U.S. is committed to remaining a world-class competitor.

ACTE/CAN MEMBERS
as of April 29, 1988

ABC Custom Cedar Homes, Inc.	Sonoma, CA
ADC Telecommunications	Bloomington, MN
AT&T	New York, NY
A-C Brake Co., Inc.	Louisville, KY
A.T. Cross Company	Lincoln, RI
ADAPSO	Arlington, VA
ALCOA	Pittsburgh, PA
AMCA International Corporation	Hanover, NH
Aaonton Group, Inc.	Plano, TX
Action Associates	Bloomington, MN
Aetna Life and Casualty Company	Hartford, CT
Aerospace Industries Association of America, Inc.	Washington, DC
Afro/Hispanic-American Chambers of Commerce	Bossier City, LA
Air Conditioning and Refrigeration Institute	Arlington, VA
Air Conditioning Contractors of America	Washington, DC
Alaska Quality Control & Technical Services, Ltd.	Anchorage, AK
Albert Seisler Machine Corporation	Mohnton, PA
Alderfer & Herm	Denver, CO
Allied-Signal International, Inc.	Morristown, NJ
Allis - Chalmers Corporation	West Allis, WI
Almerica Overseas, Inc.	Destin, FL
Alpha Research, Inc.	Glendale, WI
Alumax, Inc.	San Mateo, CA
Amana Refrigeration, Inc.	Amana, IA
Amatos, Inc.	Middletown, CT
Ambler Organizational Consultants, Inc.	Cherry Hill, NJ
Amerace Corporation	Hackettstown, NJ
Amerex Corporation	Trussville, AL
American Association of Exporters & Importers	New York, NY
American Association of Meat Processors	Elizabethtown, PA
American Business Conference	Washington, DC
American Cast Metals Association	Des Plaines, IL
American Council of Independent Laboratories	Washington, DC
American Electronics Association	Washington, DC
American Express Company	New York, NY
American Federation of Small Business	Chicago, IL
American Frozen Food Institute	McLean, VA
American Furniture Manufacturers Association	Washington, DC
American Gas Association	Arlington, VA
American Hotel and Motel Association	Washington, DC
American Institute of Marine Underwriters	New York, NY
American Institute of Small Business	Minneapolis, MN
American Meat Institute	Rosslyn, VA
American Newspaper Publishers Association	Washington, DC
American Paper Institute	New York, NY
American Retail Federation	Washington, DC
American Street Corridor Business Association	Philadelphia, PA
American Trucking Association	Alexandria, VA
Americas Society	New York, NY
Amigo Sales, Inc.	Bridgeport, MI
Amoco Corporation	Chicago, IL
Andersons	Maumee, OH
Archer Daniels Midland	Decatur, IL
Armtek Corporation	New Haven, CT
Arthur Andersen & Company	Chicago, IL
Arthur Young	New York NY
Artmor Plastics Corporation	Cumberland, MD
Associated Builders & Contractors	Washington, DC
Associated Lumber Industries, Inc.	Carbondale, IL
Association of Collegiate Entrepreneurs	Wichita, KS
Association of Home Appliance Manufacturers	Alexandria, VA
Atlantic Council Canada Group	Washington, DC
Augat, Inc.	Mansfield, MA
Austad's	Sioux Falls, SD
Avon Products, Inc.	New York, NY
B.F. Goodrich Company	Akron, OH
BP America, Inc.	Cleveland, OH
Babcock & Wilcox Company	New Orleans, LA
Baker Service Tools	Houston, TX
Baldor Electric Company	Fort Smith, AR
Ball Corporation	Muncie, IN
Ball Publishing Company	Arcanum, OH
Bank of America	San Francisco, CA
Barnes Group, Inc.	Bristol, CT
Barrett Trailers, Inc.	Oklahoma City, OK
Barrios Technology, Inc.	Houston, TX
Barrister Information Systems Corporation	Buffalo, NY
Bearings, Inc.	Cleveland, OH
Beckman Instruments, Inc.	Fullerton, CA
Bemis Manufacturing Company	Sheboygan Falls, WI
Bend Photo Center, Inc.	Bend, OR
Bernard R. Horn Company	Folcroft, PA
Better Business Bureau of Maricopa County	Mesa, AZ
Black & Decker Corporation	Towson, MD
Blair Cartage, Inc.	Newbury, OH
Blatt's Bakery	Put-in-Bay, OH
Boeing Company	Seattle, WA
Boise Cascade Corporation	Boise, ID
Bowes Manufacturing, Inc.	Solon, OH
Bristol-Myers Company	New York, NY
Brodart Company	Williamsport, PA
Brooklyn Union Gas Company	Brooklyn, NY
Brown Capital Management, Inc.	Baltimore, MD
Brown Deer Bank	Brown Deer, WI
Brown-Forman Corporation	Louisville, KY
Buffalo Forge Company	Buffalo, NY
Buffalo News	Buffalo, NY
Business Roundtable	Washington,DC
CAN-AM Business Council of the Greater Buffalo Chamber of Commerce	Buffalo, NY
CF Industries	Long Grove, IL
CPC International, Inc.	Englewood Cliffs, NJ

Senator DIXON. I thank you very much, Mr. Ruth.

And may I say to my good friend, the Senator from Missouri, that I asked a number of questions of the prior panel, and we are only going to be here till a maximum of 11:30 due to the five roll calls back to back. May I accommodate my friend from Missouri? Does he have any questions he would like to ask the panel?

Senator BOND. I apologize for not being here for your questions, Mr. Chairman. You asked several of the ones that I would have asked on the Alaskan oil export issue, which was one of the things I had.

I would say the primary question I have—and I apologize—it would be to Mr. Lefkin, the insurance representative.

SEVERE RESTRICTIONS ON AMERICAN INSURANCE INDUSTRIES

As I understand it, the Agreement leaves in place a number of the rather severe restrictions on American insurance companies seeking to do business in Canada, but what impact do you think these will have? How serious do you view them, and is the Agreement acceptable with the continuation of these?

Mr. LEFKIN. I think you raise some very good points. There are indeed restrictions on U.S. companies doing business in Canada, and of course those restrictions are grandfathered in. The Agreement only affects prospective acts by the provinces and by the Canadian Federal Government.

We are not very pleased by the fact that the trade negotiators really did not apply pressure to have some of these restrictions removed. Among other things is how they value the assets that are put in reserves. They apply two different standards, one to American and other foreign companies, another to Canadian insurers.

U.S. State insurance regulators, in contrast, have really accorded Canadian and other international insurance operations full national treatment over a period of years, and thus to a certain degree you might say that the Canadian insurance industry probably got more out of the deal than we did, to a certain degree.

Senator BOND. Are you still supporting the Agreement?

Mr. LEFKIN. We are still supportive of the Agreement. We think that there are some excellent opportunities to expand our operations in Canada.

I represent property casualty insurance companies. The life insurance companies have been subject to the 10/25 rule, which prevents them from owning insurance operations in Canada. That rule would be waived for American companies doing business in Canada, and they view that as presenting new market opportunities.

On balance, it is a step in the right direction. It does not take care of all of our concerns, but probably no agreement would.

We do think it offers some positive elements, which we can work on in the future.

Senator BOND. I share your concern. It doesn't look like we came away with a full plate in this area.

But, Mr. Chairman, I thank you for your time.

Senator DIXON. I thank my friend from Missouri.

Mr. Yingling, your written and oral testimonies were excellent. I agree with almost everything you said.

One question I have, however, relates to the sentence on page 5 of your written testimony where you state, and I quote:

> We want to particularly emphasize that the Agreement contemplates Glass-Steagall reform and commits both nations to further liberalize their financial markets.

While I agree that the Agreement contemplates Glass-Steagall reform in our country, I don't think that it commits our country on that issue one way or the other, and I wonder whether you would care to clarify that portion of your statement.

Mr. YINGLING. I will try. I am still trying to recover the never-ending paranoia of my friends in the insurance industry, although having stood in these halls for two days——

Senator DIXON. It remains familiar to the Chair.

Mr. YINGLING. Having stood in the halls with most of the people in this room during your last mark up, I shouldn't be too surprised. I just would point out one thing on that.

U.S. banks have participated in insurance in many countries overseas for years, including, for example, Great Britain, and there is no way for us to go backdoor through these foreign countries into this country. This trade agreement doesn't change that in any respect as far as we are concerned.

In answer to your question, there is language in the treaty which has the flavor of a commitment, but I don't think that the treaty commits the United States to any particular action to liberalize our current laws. I think a better way to term it would be that it is a recognition of the worldwide trend toward liberalization.

Most, if not all, of the major countries, as you know, are liberalizing their laws governing financial institutions in recognition of the marketplace realities.

Having sat through days of hearings in this room, as both of you Senators have, I think there is a recognition among most members of the Senate Banking Committee that there is the need to liberalize our laws.

I would point out that Canada is way ahead of our country in terms of liberalization, in terms of permitting banks to engage in insurance and securities activities, and vice versa. But there really is no commitment through the treaty for our country to take any specific actions to liberalize our laws.

Senator DIXON. Under Canadian law, their banks can branch nationwide.

Will U.S. banks have a similar right under section 17 of this Agreement?

Mr. YINGLING. Yes.

DEFINITION OF NATIONAL TREATMENT

Senator DIXON. Mr. Hormats, when you testified before the House's Energy and Commerce Committee March 22 of this year, you stated that U.S. and Canadian negotiators were unable to agree on a definition of national treatment in the financial services area.

Can you share with us your understanding of what the difficulties were in the negotiations on this issue and how this important

matter of determining whether a country is receiving national treatment is to be handled?

Mr. HORMATS. Yes. I do not know, Mr. Chairman, all of the details of the negotiations. I went over them several months ago, and I do not recollect all of the nuances of the debate.

My impression is that while they recognized that they could not come to a specific agreement on the definition of national treatment, they understood that should an issue of this sort arise; in other words, should an American firm claim that it was not being given national treatment or something tantamount to that, there was a procedure within this consultative mechanism for addressing it.

So while they could not agree on the specific definition, they recognized it to be an issue. And they also recognized that they needed a procedure to address it.

Senator DIXON. Very good.

Mr. Lefkin, you raised a number of concerns on pages 5 and 6 of your testimony about the Agreement providing a backdoor way for a greater role of the Federal Government in the regulation of taxation of the business of insurance.

You further state that implementing language to prevent this may be appropriate.

Have you offered any clarifying language to the administration and, if not, why not?

Mr. LEFKIN. We have offered clarifying comments to the administration. We are in the process of preparing documents to the administration, addressing this particular problem. We don't and I would not anticipate any difficulties. The states have accorded national treatment to Canadian insurers and do not differentiate between American companies and Canadian companies operating in the United States.

We hope this will be clarified. We do not view it as insurmountable.

Senator DIXON. You said to my friend from Missouri that the American Insurance Association supports the Trade Agreement.

Do you know whether any of the major insurance trade associations in the country oppose the agreement?

Mr. LEFKIN. No. I believe most of the trade associations which have focused in upon this issue are supportive. That would include the American Council of Life Insurance.

Senator DIXON. Mr. Ruth, Mr. Yingling on page 6 of his testimony states that:

> Some elements of the U.S. insurance industry have raised the concern that a U.S. bank may be able to avoid current internal U.S. restrictions on insurance activities through acquisition of a Canadian insurance company. Our reading of the agreement is to the contrary.

Do you agree with Mr. Yingling?

Mr. RUTH. We would not be able to use the agreement as a backdoor to do anything different in the United States that we would not otherwise be able to do.

Senator DIXON. I thank you.

Mr. Ruth, you state on page 5 of your testimony that:

Calvert Gallery	Washington, DC
Carbis Walker & Associates	Butler, PA
Cargill, Incorporated	Minneapolis, MN
Carlton Group	Richmond, VA
Carolina Freight Carriers Corporation	Cherryville, NC
Cass County Abstract Company	Fargo, ND
Castite Systems, Inc.	Cleveland, OH
Caterpillar, Inc.	Peoria, IL
Champion International Corporation	Stamford, CT
Charles Beck Machine Corporation	King of Prussia, PA
Charles F. McAfee Architects Engineer Planners	Wichita, KS
Charter Medical Corporation	Macon, GA
Chattahoochee Business Group	Marietta, GA
Chicago Barter Corporation	Lombard, IL
Chicore Groves	Orlando, FL
Christy's	Ellwood City, PA
Chrysler Corporation	Highland Park, MI
Citicorp	New York, NY
Citizens for a Sound Economy	Washington, DC
Citizens for the U.S.-Canada Free Trade Pact	Washington, DC
Clark Seals, Ltd.	Tulsa, OK
Claseman Management Services	St. Paul, MN
Climatic Control Company, Inc.	Milwaukee, WI
Coalition of Service Industries, Inc.	Washington, DC
Coca Cola Company	Atlanta, GA
Colborn's	Billings, MT
Coleco Industries, Inc.	West Hartford, CT
Collectors Guild Ltd.	Wilmington, NC
Columbia Chocolates By Mordens	Astoria, OR
Comdisco, Inc.	Rosemont, IL
Commercial Design Consultants	Milwaukee, WI
Committee for Small Business Exports	Aspen, CO
Comp-U-Card International, Inc.	Stamford, CT
Competition Cams, Inc.	Memphis, TN
Competitive Enterprise Institute	Washington, DC
Computer & Business Equipment Manufacturers Association	Washington, DC
Computer & Communications Industry Association	Washington, DC
Conco Systems, Inc.	Verona, PA
Concord Engineering, Inc.	Richmond, CA
Concord, Inc.	Fargo, ND
Consolidated Freightways, Inc.	Menlo Park, CA
Contact Systems Corporation	New York, NY
Control Data Corporation	Minneapolis, MN
Cooper Industries, Inc.	Houston, TX
Coopers & Lybrand	New York, NY
Copyright Clearance Center	Salem, MA
Creative Management Concepts	Reading, PA
Curtis Circulation Company	Hackensack, NJ
Custom Engineering, Inc.	Englewood, CO
D&M Consulting & Brokerage, Inc.	Marshfield, WI
D-M-E Company	Madison Heights, MI
Dawg Duvers & Company	Jesup, GA
Deering Lumber, Inc.	Biddeford, ME
Design & Manufacturing Corporation	Connersville, IN
Di-Rec Services	Dallas, TX
Distilled Spirits Council of the U.S., Inc	Washington, DC
Dollar Power Discount Store	San Francisco, CA
Dolphin Photo Center, Inc.	Bend, OR
Donaldson Company, Inc.	Minneapolis, MN
Dow Chemical, U.S.A.	Midland, MI
Dow Corning Corporation	Midland, MI
Dunkin' Donuts Incorporated	Randolph, MA
E. I. du Pont de Nemours & Company	Wilmington, DE
E. J. Kearney & Company	Portland, ME
E. R. Clarke Associates, Inc.	Lake Forest, IL
Eastern Building Material Dealers Assoc.	Media, PA
Eastman Kodak Company	Rochester, NY
ERA Steel Construction Corp.	White Plains, NY
Echlin Corp.	Branford, CT
Eclipse, Inc.	Rockford, IL
Econocorp, Inc.	Randolph, MA
Elbert Bradshaw Enterprises	Carmel, IN
Electro Rent Corporation	Santa Monica, CA
Ellett Brothers	Chapin, SC
Emergency Committee for American Trade	Washington, DC
Enerco Technical Products, Inc.	Cleveland, OH
Equitable Financial Companies	New York, NY
Ernst & Whinney	New York, NY
Esselte Business Systems, Inc.	Garden City, NY
Event Specialists, Inc.	Anchorage, AK
Executive Report	Pittsburgh, PA
Exxon Corporation	New York, NY
FMC Corporation	Chicago, IL
Fairchild Industries	Chantilly, VA
Fila Associates	Miami, FL
Firestone Tire & Rubber Company	Akron, OH
First Bank System	Minneapolis, MN
First Boston Corporation	New York, NY
Flambeau Corporation	Baraboo, WI
Fleetwood Enterprises, Inc.	Riverside,CA
Flint Industrial Services	Albany, GA
Focus Electronics, Inc.	Brooklyn, NY
Ford Motor Company	Dearborn, MI
Fort Howard Paper Company	Green Bay, WI
Fraser Paper, Limited	Madawaska, ME
Fred Jones Manufacturing Company	Oklahoma City, OK
Free Press Media Group	Hendersonville, TN
Fuqua Industries, Inc.	Atlanta, GA
Fur Vault, Inc.	New York, NY
G.D. Searle & Company	Chicago, IL
Garrett Corporation	Torrance, CA
Gatherings South, Inc.	Greenville, SC
Gene Boyer & Associates, Inc.	Beaver Dam, WI
Genentech, Inc.	S. San Francisco, CA
General Dynamics Corporation	St. Louis, MO
General Electric Company	Fairfield, CT
General Motors Corporation	Detroit, MI

General Public Utilities Corporation	Parsippany, NJ
Georgia-Pacific Corporation	Atlanta, GA
Gerber Industries, Inc.	St. Peters, MO
Glowacki Everhardt & Association, Inc.	Toledo, OH
Goldman Sachs	New York, NY
Goodyear Tire & Rubber Company	Akron, OH
Gorman-Rupp Company	Mansfield, OH
Grand Trunk Western	Detroit, MI
Greater Newark Chamber of Commerce	Newark, NJ
Gregory Manufacturing Co., Inc.	Jackson, MS
Griffin Agency	Prospect, PA
Grit Publishing Company	Williamsport, PA
Grumman Corporation	Bethpage, NY
HMA International Business Development, Ltd.	Greensboro, NC
Half Price Books, Inc.	Dallas, TX
Hamilton Beach, Inc.	Waterbury, CT
Harodite Finishing Co., Inc.	North Dighton, MA
Hartz Mountain Corporation	Harrison, NJ
Heat - Timer Corporation	Fairfield, NJ
Helene Curtis Industries	Chicago, IL
Hercules, Inc.	Wilmington, DE
Hercules Engines, Inc.	Canton, OH
Herrmidifier Company, Inc.	Lancaster, PA
Hevi-Haul International Limited	Butler, WI
Hexagon Architecture Group Limited	Wyncote, PA
High-Tech International	Beltsville, MD
Hill & Associates	Madison, WI
Hoffman Air & Filtration Systems	East Syracuse, NY
Holiday Corporation	Memphis, TN
Holloman Child Development Centers	Hampton, VA
Honda North America	Torrance, CA
Honeywell, Inc.	Minneapolis, MN
Hoover Company	North Canton, OH
Horizon Resources Corporation	York, PA
Hotwatt, Inc.	Danvers, MA
Hunt Tractor, Inc.	Louisville, KY
ITT Corporation	New York, NY
ITBR, Inc.	Austin, TX
Illinois Lumber & Material Dealers Assoc.	Springfield, IL
Illinois Small Businessmen's Assoc.	Chicago, IL
Image Express	Southfield, MI
Imperial Schrade Corporation	New York, NY
Impressive Advance & Litho, Inc.	Waynesboro, VA
Incom International, Inc.	Pittsburgh, PA
Independent Bakers Association	Washington, DC
Industrial Commission of Arizona	Mesa, AZ
Industrial Heating Equipment Association	Arlington, VA
Informerific/Hexter & Associates	Cleveland, OH
Ingersoll-Rand Company	Woodcliff Lake, NJ
Intel Corporation	Santa Clara, CA
International Business Aviation Council, Ltd.	Washington, DC
International Business Machines Corp.	Armonk, NY
International Data Corporation	McLean, VA
International Franchise Association	Washington, DC
Interstate Electronics Corporation	Anaheim, CA
Interstate Natural Gas Assoc. of America	Washington, DC
JGP Marketing Group International, Inc.	Livonia, MI
JLG Industries, Inc.	McConnellsburg, PA
Jack O'Conner's Quality Beef 'N Seafood	Bridgewater, NJ
Johnson & Higgins	New York, NY
Johnson & Johnson	New Brunswick, NJ
Jon Holtshopple & Associates	Madison, WI
Judith E. Meador	St. Louis, MO
Justin Boot Company	Fort Worth, TX
Katy Industries, Inc.	Elgin, IL
Kentucky Manufacturing Company	Louisville, KY
Kerr-Hays Company	Ligonier, PA
Kimball Physics, Inc.	Wilton, NH
Kingsbury Machine Tool Corporation	Keene, NH
Knape & Vogt Manufacturing Company	Grand Rapids, MI
Knoll International Holdings, Inc.	New York, NY
Koch Industries	Wichita, KS
Koester Corporation	Defiance, OH
Kraft, Inc.	Glenview, IL
Krughoff Company	Naperville, IL
L.R. Nelson Corporation	Peoria, IL
LC Technologies, Inc.	Fairfax, VA
Lafarge Corporation	Washington, DC
Lamanite Enterprises Corporation	Clearfield, UT
Lancaster Laboratories, Inc.	Lancaster, PA
Laramy Products Company	Lyndonville, VT
Lavelle Aircraft Company	Philadelphia, PA
Lear Jet Corporation	Wichita, KS
Lee, Theisen & Stegall	Phoenix, AZ
Lennox Industries, Inc.	Dallas, TX
Lewis Ranches	Portland, OR
Lin-Art, Ltd.	Arlington Heights, IL
Litton Industries	Woodland Hills, CA
Longyear Company	Minneapolis, MN
Louisiana Association of Business and Industry	Baton Rouge, LA
Louisiana Retailers Association	Baton Rouge, LA
Louisville Plate Glass Company	Louisville, KY
Lowe's Companies, Inc.	North Wilkesboro, NC
Lumbermen Associates, Inc.	Philadelphia, PA
M. Brown & Sons, Inc.	Bremen, IN
M. S. Hansson, Inc.	Boulder, CO
MDB, Inc.	Pittsburgh, PA
Mack Trucks Inc.	Allentown, PA
Macmillan, Inc.	New York, NY
Maidenform, Inc.	New York, NY
Maine Machine Products Company	South Paris, ME
Maine Wild Blueberry Company	Machias, ME
Manufactured Buildings Components, Corp.	East Lansing, MI
Manufacturers Hanover Trust Co.	New York, NY
Marco Wood Products	Walled Lake, MI
Margaret Coleman Associates	Hinsdale, IL
Marketing Communications Systems	Portland, OR
Markets Abroad, Inc.	Miami, FL

Marriott Corporation	Washington, DC
Marsh & McLennan, Inc.	New York, NY
Marshall & Associates	Topsfield, MA
Mary Kay Cosmetics	Dallas, TX
Mattel, Inc.	Hawthorne, CA
Mayflower Transit, Inc.	Indianapolis, IN
Maytag Corporation	Newton, IA
McIntosh, Inc.	Norfolk, NE
McLaurin Parking Company	Raleigh, NC
McMinnville City Sanitary Service, Inc.	McMinnville, OR
Measurex Corporation	Cupertino, CA
Mel Boldt & Association	Mt. Prospect, IL
Mentholatum Company	Buffalo, NY
Merck & Co., Inc.	Rahway, NJ
Metal Treating Institute	Jacksonville Beach, FL
Metropolitan Life Insurance Company	New York, NY
Mid-Continent Cold Storage Company	Omaha, NE
Milbar Corporation	Chagrin Falls, OH
Miller Picking Corporation	Johnsontown, PA
Minnesota Mining & Manufacturing Company (3M)	St. Paul, MN
Mobil Oil Corporation	New York, NY
MonArk Boat Company	Monticello, AR
Monsanto Company	St. Louis, MO
Morgan Guarantee	New York, NY
Morton Buildings, Inc.	Morton, IL
Mosbacher Energy Company	Houston, TX
Moser Bag & Paper Company	Cleveland, OH
Mosler International	Hamilton, OH
Motor Vehicle Manufacturers Association	Detroit, MI
Murphy Oil Corporation	El Dorado, AR
N. J. Chapter - National Association of Women Business Owners	Cherry Hill, NJ
NVRyan	McLean, VA
Nalco Chemical Company	Naperville, IL
National American Wholesale Grocers Association	Falls Church, VA
National Association of Beverage Importers, Inc.	Washington, DC
National Association of Home Builders	Washington, DC
National Association of Manufacturers	Washington, DC
National Association of Photographic Manufacturers	Harrison, NY
National Association of Printing Ink Manufacturers	Harrison, NY
National Association of Women Business Owners	Chicago, IL
National Federation of Independent Business	Washington, DC
National Foreign Trade Council	New York, NY
National Frame Builders Association	Kansas, City, MO
National Grange	Washington, DC
National Gypsum Company	Dallas, TX
National Hispanic Business Association	Chamblee, GA
National Lumber & Building Materials Dealers Association	Washington, DC
National Machine Tool Builders Association	McLean, VA
National Retail Merchants Association	Washington, DC
National Small Business United	Washington, DC
National Starch & Chemical Corporation	Bridgewater, NJ
National-American Wholesalers Grocers' Association	Washington, DC
Nestle Enterprises, Inc.	Solon, OH
New England Council, Inc.	Boston, MA
New England Electric System	Westborough, MA
New Jersey Small Business Unity Council	Little Silver, NJ
Newlyweds Foods, Inc.	Chicago, IL
Nicholson, Inc.	Helena, MT
Norstar Bank	Buffalo, NY
North Haven Gardens	Dallas, TX
Northeastern Retail Lumbermen's Association	Rochester, NY
Northland Corporation	Greenville, MI
Northwest River Supplies, Inc.	Moscow, ID
O'Brien Communications	Del Mar, CA
Oakes & McClelland Company	Greenville, PA
Oakwood Markets, Inc.	Kingsport, TN
Occidental Chemical Corporation	Dallas, TX
Ogilvy & Mather International	New York NY
Oneida Ltd.	Oneida, NY
PC Etcetera	New York, NY
PII Affiliates, Ltd.	Manchester, PA
PLM Companies, Inc.	San Francisco, CA
PMI/Taylor Advertising	Columbus, OH
PPG Industries, Inc.	Pittsburgh, PA
Pacer Systems, Inc.	Billerica, MA
Pacific Interstate Company	Los Angeles, CA
Pacific Northwest International Trade Association	Portland, OR
Panhandle Eastern Corporation	Houston, TX
Paragon Electric Company, Inc.	Two Rivers, WI
Parlette Tire Co., Inc.	Erie, PA
Peat Marwick Main & Company	New York, NY
Pennwalt Corporation	Philadelphia, PA
People to People Associates	Lexington, MA
Pepsi-Cola International	Somers, NY
Perham Egg, Inc.	Perham, MN
Perlis Truckstops	Cordele, GA
Pet Incorporated	St. Louis, MO
Pfizer, Inc.	New York, NY
Pharmaceutical Manufacturers Association	Washington, DC
Philips Industries, Inc.	Dayton, OH
Picken Parts, Inc.	Fresno, CA
Pillsbury Company	Minneapolis, MN
Plabell Rubber Products, Inc.	Toledo, OH
Plasma Energy Corporation	Raleigh, NC
Plasco, Inc.	Woburn, MA
Ply*Gem Industries, Inc.	New York, NY
Polaris Industries, Inc.	Minneapolis, MN
Polaroid Corporation	Cambridge, MA
Powermax, Inc.	Columbus, OH
Pratt & Lambert	Buffalo, NY

Pre-Paid Legal Services	Ada, OK
Precision Twist Drill Company	Crystal Lake, IL
Price Company	San Diego, CA
Principal Financial Group	Des Moines, IA
Prinova Co., Inc.	San Francisco, CA
Printing Industries of America	Arlington, VA
Procter & Gamble	Cincinnati, OH
Product Development Corporation	Little Rock, AR
Professional Service Corporation	Green Bay, WI
Professional Wealth Management, Inc.	Asheville, NC
Professional Women in Construction & Allied Industries	White Plains, NY
Progressive Management Enterprises, Ltd.	St. Louis, MO
Pulp & Paper Machinery Manufacturers' Association	Washington, DC
Queen Carpet Corporation	Dalton, GA
Queen City Industries, Inc.	Piqua, OH
Quick, Finan & Associates, Inc.	Washington, DC
Quill Corporation	Lincolnshire, IL
Quillen Group	Groton, CT
R. R. Accessories, Inc.	Boston, MA
R. R. Donnelley & Sons Company	Chicago, IL
RJR Nabisco	Atlanta, GA
Radio KDNO	Delano, CA
Ramada, Inc.	Phoenix, AZ
Raytheon Company	Lexington, MA
Recognition Equipment, Inc.	Dallas, TX
Recon/Optical, Inc.	Barrington, IL
Rexnord, Inc.	Brookfield, WI
Rheem Manufacturing Company	New York, NY
Ridenour & Associates	Chicago, IL
Riordan, Crivello, Carlson & Menthkowski	Milwaukee, WI
Roll-o-Matic, Inc.	Kansas City, MO
Rooney, Plotkin & Willey	Providence, RI
Rorer International Pharmaceuticals	Fort Washington, PA
Rotron Engineering Company, Inc.	Woburn, MA
Rubber Manufacturers Association	Washington, DC
Rudolph Beaver, Inc.	Waltham, MA
Rural Gravuce Services, Inc.	Madison, WI
Russ Berrie and Company, Inc.	Oakland, NJ
S. C. Johnson & Son, Inc.	Racine, WI
SNC Manufacturing Company	Oshkosh, WI
Sabre Yachts	South Casco, ME
Safeway Stores, Inc.	Oakland, CA
Samsonite Corporation	Denver, CO
Sandmeyer Steel Company	Philadelphia, PA
Sargent-Welch Scientific Company	Skokie, IL
Scientific-Atlanta, Inc.	Atlanta, GA
Scott Paper Company	Philadelphia, PA
Sears, Roebuck and Company	Chicago, IL
Shaw Mudge & Company	Stamford, CT
Shell Oil Company	Houston, TX
Sheridan & Fritz, P.C.	Harrisburg, PA
Siliconix, Inc.	Santa Clara, CA
Simplex Time Recorder Company	Gardner, MA
Singer Company	Stamford, CT
Singer, Lewak, Greenbaum & Goldstein	Los Angeles, CA
Smada, Inc.	Phoenix, AZ
Small Business Foundation of America	Boston, MA
Small Business Hawaii, Inc.	Honolulu, HI
Small Business United of Missouri	St. Louis, MO
Smaller Business Associates of New England	Boston, MA
Smaller Manufacturers Council	Pittsburgh, PA
Smith Barney, Harris, Upham & Co., Inc.	New York, NY
Smith Rollinson	Alexandria, VA
Snyder General Corporation	Dallas, TX
Southern Connecticut Gas Company	Bridgeport, CT
Spacesaver Corporation	Fort Atkinson, WI
Specialized Carriers & Rigging Association	Alexandria, VA
Square One, Inc.	Madison, WI
Squibb Corporation	Princeton, NJ
Sta-Rite Overseas Corporation	Milwaukee, WI
Stackpole Corporation	Boston, MA
Standard-Thomson Corporation	Waltham, MA
Stemco, Inc. Truck Products	Longview, TX
Steiner Shipyard, Inc.	Bayou La Batre, AL
Stiegler, Inc.	Fargo, ND
Stone & Webster Engineering Corporation	Boston, MA
Storage Technology Corporation	Louisville, CO
Stripling-Blake Building Lumber Co., Inc	Austin, TX
Sun Electric Corporation	Crystal Lake, IL
Superior Technical Ceramics Corporation	St. Albans, VT
Syntex Corporation	Palo Alto, CA
T&H Building Supply	Redwood City, CA
TAPJAC Home Centers	Carthage, MO
TRW, Inc.	Cleveland, OH
TVI Creative Specialists	Washington, DC
Tandem Computers Incorporated	Cupertino, CA
Tandy Brands, Inc.	Fort Worth, TX
Tandy Corporation	Fort Worth, TX
Tanner Systems, Inc.	Sauk Rapids, MN
Tatum Enterprises	Honolulu, HI
Technivest, Inc.	South Bend, IN
Ted Grob Sales, Inc.	Grafton, WI
Telemarketing Company	Chicago, IL
Tenneco Gas Pipeline Group	Houston, TX
Termiflex Corporation	Merrimack, NH
Terry Neese Personnel Services	Oklahoma City, OK
Texas Industries, Inc.	Dallas, TX
Textron, Inc.	Providence, RI
Thomas J. Seitz Co., Inc.	Racine, WI
Tingley Systems, Inc.	San Antonio, FL
Toledo Harbor Warehousing, Inc.	Toledo, OH
Touche-Ross	New York, NY
Tracor, Inc.	Austin, TX
Trail King Industries, Inc.	Mitchell, SD
TransTech, Inc.	East McKeesport, PA
Tri-M Corporation	Kennett Square, PA

Triangle Research Development Corp.	Research Triangle Park, NC
Trinity Industries, Inc.	Dallas, TX
Trouble Shooters, Inc.	Omaha, NE
Truck Trailer Manufacturers Association	Alexandria, VA
Trucking Services, Inc.	Dearborn Heights, MI
U.S. Axle, Inc.	Pottstown, PA
U.S. Bearings & Drives of CA, Inc.	Santa Clara, CA
U.S. Chamber of Commerce	Washington, DC
U.S. Council for International Business	Washington, DC
USG Corporation	Chicago, IL
Ultrasystems, Inc.	Irvine, CA
Unilever United States, Inc.	New York, NY
United Fresh Fruit & Vegetable Association	Alexandria, VA
United Illuminating Company	New Haven, CT
United Industries, Inc.	Wichita, KS
Upjohn Company	Kalamazoo, MI
Valspar Corporation	Minneapolis, MN
Vanport Manufacturing, Inc.	Boring, OR
Village Green	Midland, MI
Virco Manufacturing Corporation	Torrance, CA
Vocational Rehabilitation Associates, Inc.	Eugene, OR
W.H. Brady Company	Milwaukee, WI
W.R. Grace & Company	New York, NY
WIS, Inc.	Toledo, OH
Wainoco Oil Corporation	Houston, TX
Waldorf Corporation	St. Paul, MN
Wayer Corporation	Landover, MD
Western Publishing Company, Inc.	Racine, WI
Weyerhaeuser Company	Tacoma, WA
Whale Scientific, Inc.	Commerce City, CO
Whirlpool Corporation	Benton Harbor, MI
White Plains Iron, Inc.	New York, NY
Wholesale Florists & Florist Suppliers of America	Arlington, VA
Will-Burt Company	Orrville, OH
William A. Price & Associates	Wheaton, IL
William H. Taylor & Company, Inc.	Allentown, PA
Wingspread Corporation	New York, NY
Women Entrepreneurs	Lincolnwood, IL
Women Featherbone Company	Gainesville, GA
Woodhead Industries, Inc.	Northbrook, IL
World Trade Counselors	Estes Park, CO
Zimpro Passavant, Inc.	Rothschild, WI
ZinYeast, Inc.	Marshfield, WI

The United States-Canada Agreement sends a signal that the United States will pursue bilateral channels to open up world markets if the necessary progress is not made in GATT.

Do you think that sending out such a signal could be counterproductive to our hope for a broader multilateral trade agreement in the Uruguay round?

Mr. RUTH. I think it actually can be productive. The desirable option would be to handle all of these issues in the broadest possible way multilaterally. We are optimistic that the GATT will be able to extend itself to cover these kinds of issues, investment/financial services services.

However, in the absence of that, we would like to keep open the option to open financial service markets in as many different ways as possible. We would not however, encourage the establishment of restructive trading blocs of traders on these kinds of issues, but are still encouraging multilateral treatment for all of them.

Senator DIXON. Mr. Hormats, do you have an opinion about that?

Mr. HORMATS. Yes. I would agree with that. I think the GATT has traditionally not covered services or investment and, if has covered it, it has covered it only sporadically. I believe it would be very useful in the multilateral negotiations in the Uruguay round to press this.

It may well be that there are only a relatively few nations at this point who are willing to go as far in their negotiations on services as, say, the United States and Canada. And therefore I don't think that we should feel constrained about having a relatively small group of nations which subscribes initially to more liberal treatment on services and let the others come along.

It deviates a bit from the traditional view of total most-favored-nation treatment. But I don't think we should feel that we cannot move ahead with a few key nations if we simply cannot get the rest.

Brazil has had a very difficult time liberalizing on services, but there may be 5 or 6 or 10 or 20 other countries who feel that they can move ahead, and we ought to do that and let the others catch up. They simply will not benefit from the rules if they don't play by them.

So we ought not stop the progress because some nations don't want it.

Senator DIXON. I appreciate very much the valuable contribution all four of you have made, and I am glad to see that, Mr. Yingling, you and Mr. Lefkin are still getting along well. [Laughter.]

I think there will be more written questions we will give to all of you, and we thank you very much for accommodating us today.

The hearing is concluded.

[Whereupon, at 11:15 a.m., the committee was adjourned.]

[Additional material supplied for the record follows:]

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

August 4, 1988

The Honorable William Proxmire
Chairman
Senate Banking Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to the Committee's request for our written opinion regarding the constitutionality of paragraph 3 of Annex 902.5 of the U.S.-Canada Free-Trade Agreement and of the legality of implementing it through statutory language which differs from the language of paragraph 3.

Paragraph 3 provides:

> The United States of America shall exempt Canada from the prohibition on the exportation of Alaskan oil under section 7(d) of the Export Administration Act of 1979, as amended, up to a maximum volume of 50 thousand barrels per day on an annual average basis, subject to the condition that such oil be transported to Canada from a suitable location within the lower 48 states.

The original, ad referendum U.S. commitment to allow the export of a limited amount of the Alaskan oil that is subject to the section 7(d) prohibition was made in an October 3, 1987 agreement in principle between the U.S. and Canada. This commitment was made in response to Canada's request for unlimited access to the Alaskan oil. Canada's negotiators pointed out that Canada has no comparable limitation on the export of their crude oil to the United States, and that the U.S. export ban is inconsistent with the general principles of the proposed Agreement. The U.S. agreed to amend section 7(d) so as to relax the export restriction, but only to the extent of 50,000 barrels per day on an annual average basis. In addition, the U.S. insisted upon stipulating, in the October 3 agreement in principle, that the Alaskan oil must be transported from Alaska on U.S.-flag vessels.

When the final Free-Trade Agreement (FTA) was drafted, this condition--which existed solely for the benefit of the United States--was expressed somewhat differently in paragraph 3 of Annex 902.5. Paragraph 3 reflects the Canadian Government's expectation

that the Alaskan oil likely would be acquired for Canadian refineries in Vancouver, British Columbia. Since Vancouver ports presently lack the capability to receive ships used in the transportation of this oil from Valdez, Alaska, it was assumed that the oil would be transported by tankers from Valdez, Alaska to Cherry Point, Washington, and barged from Cherry Point to Vancouver. The carriage of the oil from Valdez to Cherry Point on U.S.-flag vessels would be assured in such a voyage, since 46 U.S.C. App. 883 (the "Jones Act") requires the use of U.S.-flag vessels in the U.S. coastwise trade. It was this understanding of the likely shipment of the Alaskan oil which underlay the condition expressed in paragraph 3 that such oil be shipped to Canada from a suitable location in the lower 48 states.

A provision contained in an earlier omnibus trade bill that was vetoed by the President, H.R. 3, would have implemented the commitment made in paragraph 3 of the Free-Trade Agreement by enacting the literal condition expressed in paragraph 3, that the Alaskan crude oil "be transported to Canada from a suitable location within the lower 48 states." This provision, which was deleted in the omnibus trade bill most recently passed by the House as H.R. 4848, raised a question of constitutionality in light of the limitation, set out in Article I, Section 9, Clause 6 of the U.S. Constitution, on the Congress' power to regulate interstate commerce:

> No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

The U.S. obligation to Canada that is set out in the Free-Trade Agreement does not itself present a question of constitutional infirmity because this FTA provision is not self-executing as a matter of domestic law. The U.S. international obligation to Canada can be implemented as a matter of domestic law by a legislative provision different from that contained in H.R. 3; a different provision, although faithful to the commitment made by the U.S. to allow the export of Alaskan crude oil, need not raise the constitutional issue involved in the Alaskan crude oil export provision of H.R. 3.

The provision approved by your committee and included in the final implementing bill for the FTA avoids the constitutional problem by expressing the U.S.-flag shipping condition, with regard to the transportation from Valdez of the Alaskan oil exports, as one that any "ocean" transportation of the exported oil must be by vessels documented under 46 U.S.C. 12106.

This formulation in no way contravenes Article I, Section 9, Clause 6: it permits the Alaskan oil to be shipped directly to Canada from Alaska, if Canada is physically able to receive the ships which transport it. And it assures (along with appropriate regulatory provisions) that the oil will be carried from Valdez on U.S.-flag vessels, while permitting the use of foreign-flag barges between Washington State ports and Vancouver refineries, as agreed with Canada.

There is no inhibition on the ability of the U.S., as a matter of either international or domestic law, to implement the Free-Trade Agreement commitment through legislative language such as that approved by your committee. The condition in paragraph 3, Annex 902.5 that the oil "be transported from a suitable location within the lower 48 states" exists exclusively for the benefit of the United States, and it is within the power of the Executive to waive the literal implementation of that provision. See 14 Whiteman, Digest to International Law 441-42. Furthermore, in this case the substance of paragraph 3, and indeed the literal underlying condition of the October 3, 1987 agreement in principle between the U.S. and Canada, would be entirely fulfilled by enactment of the Committee's legislative proposal.

For the above reasons, we do not believe the Alaskan oil provision of the FTA is constitutionally infirm, and we believe that the legislative provision implementing the international obligation in domestic law is constitutional and consistent with our international obligations to Canada.

Sincerely,

Judith H. Bello

Judith H. Bello
General Counsel

RESPONSE TO WRITTEN QUESTIONS OF SENATOR DIXON FROM
JAMES AMMERMAN

DEPARTMENT OF THE TREASURY
WASHINGTON

April 13, 1988

Dear Mr. Chairman:

It was a pleasure to testify before your Subcommittee on March 22 on the financial services provisions of the U.S.-Canadian Free-Trade Agreement (FTA). I would like to supplement my testimony with additional information on a subject in which you were particularly interested--the regulatory impact, in the context of the FTA, of financial deregulation as it applies to banking and insurance services.

Let me begin by distinguishing the question of banking and insurance services being provided by affiliates in Canada from that concerning such services being provided by affiliates within the United States.

The question of what services may be provided by whom and under what conditions in Canada is a matter of Canadian law. In its deregulation of financial services, Canada has decided to permit banks to own insurance companies and vice versa. As a result of the FTA, U.S. financial institutions will be able to diversify their activities in Canada on the same basis as Canadian firms. Since Canada has not yet enacted all the laws and regulations necessary to carry out its deregulation, I cannot give you precise information on all aspects of the regulatory framework within which such diversification will take place. However, the laws and regulations implemented to date have focused on prudential and supervisory oversight.

With respect to the regulatory impact in the United States of the ability of U.S. financial institutions to diversify their activities in other countries as a result of foreign government deregulation, let me point out that Canada is not the first foreign country to deregulate its financial services system. Other countries, including the United Kingdom and West Germany, have already adopted deregulated, so-called universal banking systems. U.S. financial regulators are thus already dealing with the issue of U.S. firms engaging in activities abroad, including insurance activities, that would not be permitted under our regulatory system. Thus, there is no reason to think that Canada's financial deregulation will pose any special problems.

Let me turn now to the specific question of affiliates engaging in banking and insurance services in the United States. You questioned whether, as a result of the FTA, a bank operating in the United States could be affiliated with an insurance company operating in the United States. The FTA does not affect U.S. laws and regulations on this subject in any way and provides no authority whatsoever for such an affiliation independent of current U.S. law.

The following examples will illustrate my point.

1. A Canadian bank that owns a U.S.-chartered bank subsidiary in the United States wants to merge in Canada with a Canadian insurance company that also has a subsidiary in the United States. By virtue of its control of the U.S. bank subsidiary, the Canadian bank would meet the U.S. definition of a bank holding company (BHC) and its U.S. subsidiary would be subject to the provisions of the Bank Holding Company Act, which generally prohibit a BHC from acquiring direct or indirect ownership or control of any nonbank companies, or from itself engaging in any nonbank activities. The Bank Holding Company Act specifically states that insurance activities are prohibited nonbank activities (with some narrow exceptions). The Canadian ownership of a U.S. bank does not accord any special treatment allowing the bank in the United States to affiliate with any companies, including insurance companies, unless such an affiliation is otherwise permitted under U.S. law. In this example, the merger between the Canadian bank and the Canadian insurance company in Canada would require a divestiture in the United States because they both have offices in the United States. In order to accomplish the merger, either the Canadian bank or the Canadian insurance company would have to divest its U.S. operations. The FTA would not change the result in this example.

2. Assume the same facts as above except that the Canadian bank has a branch in the United States rather than a U.S. bank subsidiary. The International Banking Act of 1978 provides that any foreign bank that maintains a branch (or agency) in any State shall be subject to the nonbanking prohibitions of the Bank Holding Company Act. Therefore, the merger in Canada would require a divestiture in the United States, as explained in the previous example. Again, the FTA would not change the result.

3. A U.S. BHC has a bank subsidiary in Canada that wants to merge with a Canadian insurance company having a subsidiary in the United States. The Bank Holding Company Act provision referred to above would prohibit such a merger, and the FTA would not affect the outcome.

4. A U.S. bank that is not owned by a BHC wants to acquire a Canadian insurance company that has a subsidiary in the United States. In this example,

the U.S. bank would not become a BHC subject to the U.S. Bank Holding Company Act simply by acquiring a Canadian bank or Canadian insurance company. Nonetheless, other provisions of Federal banking law would apply to such an acquisition. Specifically, the Federal Reserve Act and the Federal Deposit Insurance Corporation Act require insured U.S. banks to obtain the approval of either the Federal Reserve Board or the Federal Deposit Insurance Corporation (FDIC) before acquiring a foreign bank or a foreign company, including a foreign insurance company. Such foreign companies acquired by U.S. banks, including foreign insurance companies, cannot engage in activities in the United States unless the Federal Reserve Board or the FDIC, as the case may be, determines that their activities are incidental to their foreign business. Conducting general insurance activities in the United States has not been found to be incidental to foreign business activities and, therefore, would not be permitted in the United States. Thus, the acquisition proposed in this example would be prohibited for an insured U.S. bank because the Canadian insurance company has a subsidiary in the United States. As in the above examples, the FTA would not affect the outcome in this example.

As I am sure you are aware, the Senate and House both are considering legislative proposals that may effect changes in the scope of permissible banking and insurance activities within the same organization. However, these proposals are completely separate from the FTA. The key point is that the FTA does not, in any way, affect current restrictions on the ability of banks to affiliate with insurance companies in the United States.

I hope this information is useful to you. If I can be of any further assistance, please let me know.

Sincerely yours,

Thomas J. Berger
Deputy Assistant Secretary
International Monetary Affairs

The Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer
Protection and Competitiveness
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

1. Question:

Let us suppose for the sake of this question that S. 1886, the Proxmire Financial Modernization Act of 1988, were enacted into law after the U.S./Canada Free Trade Agreement became law. Would you agree that a U.S. bank holding company could not buy a Canadian bank and through that bank sell insurance in the United States?

1. Answer:

Yes, we agree, unless the insurance activities are otherwise permitted for U.S. bank holding companies under the Bank Holding Company Act (e.g. credit life insurance). Even if a U.S. bank holding company acquires a Canadian bank, that U.S. bank holding company is still subject to the limitations on its insurance activities in the United States imposed by the Bank Holding Company Act, as it now exists or as it would be amended by S. 1886. As a further response to this question, we are attaching a letter we wrote to Congressman James J. Florio explaining through specific examples the fact that the FTA will not, in any way, affect current restrictions on the ability of banking organizations to affiliate with insurance companies in the United States. Our answer would be the same if S. 1886 were enacted.

U.S.-Canada FTA
Financial Services: Coverage of States and Provinces

2. Question:

Article 1701(2) of the Financial Services portion of the Free Trade Agreement specifically provides that the provisions of Article 17 shall not apply to any measure of a political subdivision of either Party. Who sought to have that provision in Article 17 and why? Does it mean that Ontario Province could if it wished change its mind on its recent decision to permit investment banks and commercial banks to merge.

Answer:

-- By mutual agreement, the negotiators on both sides decided not to extend the financial services chapter to cover states and provinces. In recognition of the dual banking system in the United States, the Treasury Department was particularly sensitive to seeking any changes in states' laws.

-- Moreover, after the liberalization of Canada's largest securities industry by the Province of Ontario, practically all of the problems the U.S. sought to address in the Canadian financial sector were under the jurisdiction of the federal authorities.

-- Since measures adopted by the Province of Ontario are not covered by the financial services chapter, the Province is under no obligation to retain the liberalization of its securities industry. However, practically speaking, the provincial authorities want Toronto to be a major world financial center, and it would not be in their interest to create uncertainty in the securities industry by reversing any liberalization.

Treasury/IMI:wcm
5/22/88

3. Question:

Mr. Lefkin, who will later testify on behalf of the American Insurance Association, voices concerns on pages 5 & 6 of his testimony that Chapter 14 of the Agreement might impinge on the state regulation of insurance.

His concern appears to be that disputes about whether a given state was carrying out its obligation to give "national treatment" to Canadian insurance companies would be settled by a forum beyond that state and could be a breach in the McCarran-Ferguson Act's decision to allow the states to regulate insurance.

Is that a legitimate concern? If so, how would you suggest it be resolved?

3. Answer:

We do not think that Chapter 14 of the Agreement or the implementing legislation as currently drafted impinges significantly on state regulation of insurance or breaches the policy established by the McCarran-Ferguson Act.

The implementing legislation provides that where state law conflicts with the Agreement, the Agreement will prevail only to the extent of the inconsistency. This approach represents the most minimal level of intrusion into state regulation that could be developed consistent with a credible U.S. commitment to provide for the effective implementation of the Agreement. This does not place the U.S. Government in the position of interceding directly in state regulation, nor does it require any changes in existing state laws and regulations since all current state laws and regulations are "grandfathered." The states remain free to determine the scope and details of their regulatory regimes. This is consistent with the policy of the McCarran-Ferguson Act.

With regard to future actions, the states must assure (as they have in the past) that Canadian firms in the United States are not discriminated against by applying different requirements that go so far beyond reasonable prudential concerns as to be considered protectionist. This obligation reflects the shared concern of the Administration and Congress that the benefits of the FTA for the United States not be lessened by Canadian provinces being free to adopt measures conflicting with the FTA. While Canada has far fewer concerns about measures of our states, we have the same international obligation under the Agreement to assure conformity of state measures with applicable obligations of the FTA.

This approach is consistent with the 1982 resolution of the National Association of Insurance Commissioners (NAIC) that insurance be included in future trade negotiations and that state regulations be respected. That resolution was based on discussions with the NAIC in which it was repeatedly explained that any future ser-

vices trade agreement in the GATT would have to include a provision for binding the states to commitments made by the Federal Government. The NAIC has been briefed semiannually, and as recently as December 1987, on the status of the U.S.-Canada FTA and how it would relate to state regulation. No opposition was voiced.

Second, any dispute arising out of the application of the national treatment standard, whether or not submitted to dispute settlement under Chapter 18 of the Agreement, would certainly be resolved in consultation with the state involved. (This procedure has already been used successfully with California and New York, for example, where issues related to guarantees for reinsurance were raised by the United Kingdom and others.) If a dispute were submitted by Canada under Chapter 18, there are many opportunities for consulation and resolution of the issue which will not require a decision by a forum outside the state. Even if those steps were unsuccessful and a decision adverse to the United States were made through arbitration or by a panel, it would be a decision that the United Staes, not the state, is in violation of the Agreement. The issue would not be settled by a forum outside the state, but would be an issue between the state and the federal governments. The federal government could even decide to withstand Canadian retaliation or offer compensation, if those courses of action were wiser.

If, in extreme cases, the federal government were to sue the state in federal court and win, it would be under the implementing statute which would be later in time than the McCarran-Ferguson Act and would indicate Congressional intent to make clear that the McCarran-Ferguson Act did not interfere with the Constitutional grant of power to the federal, rather than state, government to conduct foreign affairs.

Finally, it should be noted that the McCarran-Ferguson Act does not preclude federal statutes from superseding state laws regulating or taxing the business of insurance. Section 2 of the Act clearly provides that no federal statute shall be construed to supersede any state law regulating the business of insurance <u>unless</u> the federal statute "specifically relates to the business of insurance." The implementing bill relates to the business of insurance but, as discussed above, only to the degree necessary to ensure fulfilling our international obligations. States would continue to have a free hand to regulate and tax the business of insurance within their borders as long as any new measure does not unjustifiably discriminate against Canadian insurance providers. We have found that states generally conform to that standard even now.

4. Question:

Under Article 1702, paragraph 2 of the Agreement, the United States agrees to preserve the current grandfather rights of Canadian-controlled banks to operate State branches, agencies, banks or commercial lending companies outside their home States.

a. Am I correct in understanding that paragraph 2 has nothing to do with the branching authority of national banks, and would not prevent Congress from overturning the Comptroller's interpretation of the McFadden Act?

b. I am interested in how paragraph 2 would interact with most-favored-nation clauses in treaties between the United States and countries other than Canada. By guaranteeing the grandfather rights of Canadian-controlled banks, do we also guarantee the rights of banks from other countries with which we have most-favored-nation agreements?

4. Answer:

a. Yes, you are correct.

b. Generally, we are obligated under FCN treaties to grant most-favored-nation treatment with respect to banking. Thus, to meet our FCN obligations, any benefits we extend to Canada under the FTA must also be extended to FCN treaty partners. However, we do not believe this should pose any difficulties. The U.S. has followed a policy of national treatment in this sector for many years -- that is we have consistently provided benefits not just to U.S. banks, but also to foreign banks operating in the U.S.

5. Question:

Under Article 1702, paragraph 3 of the Agreement, the United States agrees that any amendments to the Glass-Steagall Act will accord Canadian-controlled financial institutions the same treatment as those amendments accord to U.S. financial institutions.

a. Is it correct to understand that provision as providing for national treatment of Canadian-controlled financial institutions?

b. Would that provision require any change in S. 1886 as passed by the Senate?

5. Answer:

a. Yes, Article 1702, paragraph 3 accords Canadian-controlled financial institutions the same treatment as that accorded to U.S. financial institutions.

b. To our knowledge, Article 1702, paragraph 3 of the FTA would not require any change in S. 1886 as passed by the Senate.

6. Question:

If a U.S. bank buys an insurance firm in Canada as provided for in the Agreement, may that insurance firm import its services back to the U.S. and thus get around the prohibitions in U.S. law separating banking and insurance? Is there any reason to think that the U.S.-Canada Free Trade Agreement may become a "wedge" for financial deregulation in the U.S.?

6. Answer:

The answer is no. For further information, see the answer to Question No. 1 and the attached letter from the Treasury Department to Congressman Florio.

U.S.-Canada FTA
Financial Services: Dispute Settlement Mechanism

7. Question:

The Financial Services Chapter provides for a dispute settlement mechanism to be set up between the Canadian Department of Finance and the U.S. Treasury that would operate apart from the overall dispute settlement mechanism provided for in the Agreement. How would the financial services dispute settlement function differently from the overall mechanism, and why was a separate arrangement provided for financial services?

Answer:

-- Both sides agreed that the dispute settlement mechanism of the overall agreement would not be appropriate in the financial services area.

  - o Financial sector issues are highly complex and more closely regulated than other sectors.
  - o It would be inappropriate to allow Canadian banks -- but not other foreign or U.S. banks -- to appeal regulatory decisions of the Federal Reserve Board to a binational panel that would be potentially binding.
  - o Otherwise, this would create a body of precedents separate from, and possibly conflicting with, that of our court system.

-- The financial services chapter therefore creates a flexible consultative mechanism to ensure that both parties live up to their obligations and commitments under the agreement.

-- Consultations are between the U.S. Treasury Department and the Canadian Department of Finance, where the necessary technical expertise and legal competence resides to resolve disputes.

-- Either side is entitled to call for consultation on any matter pertaining to the agreement, including specific undertakings by each side, as well as the general commitment to pursue additional financial market liberalization.

  - o A party will continue to provide the current treatment to institutions of the other party, only as long as the other party lives up to its commitments.
  - o Actions which in any way diminish benefits accorded by the agreement would be subject to compensating reductions by the other side.
  - o Thus, both parties have a real incentive to resolve disputes.

Treasury/IMI:wcm
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8. Question:

Article 1701(2) of the Financial Services Chapter of the U.S.-Canada Agreement provides that the financial services provisions "shall not apply to any measure of a political subdivision of either Party." Does this mean that the national treatment requirement that applies to the states and provinces for the rest of the Agreement does not apply to the financial services chapter?

8. Answer:

That is correct.

9. Question:

Specifically, Chapter 14 of the Agreement on Services, which includes insurance, requires that states and provinces provide national treatment to foreign parties. To the extent that insurance companies may engage in financial services as provided in the Financial Services Chapter, is this national treatment requirement not applicable?

9. Answer:

Where insurance companies engage in financial services as provided in the financial services chapter, the national treatment requirement of Chapter 14 does not apply.

10. Question:

Under the banking bill passed by the Senate, S. 1886, a bank holding company would be allowed to engage in insurance activities through a State bank subsidiary of the bank holding company (or a subsidiary of such State bank) if: the insurance activities are authorized by State law; the State bank (or subsidiary thereof) is located in the one State where the operations of that bank holding company's banking subsidiaries are principally conducted for purposes of section 3(d) of the Bank Holding Company Act; and, the insurance is provided only to residents of that State, natural persons employed in the State, or natural persons otherwise present in the State. Does this mean that Canadian banks would not be able to engage in insurance activities in the U.S. because they would not have their principal place of banking business in a State? Doesn't the International Banking Act provide that a foreign bank must elect a State as its principal place of banking business?

10. Answer:

Under the International Banking Act of 1978 ("IBA"), foreign banks that have branches and agencies in the United States (hereinafter, "foreign banks in the U.S.") are made subject to the nonbanking activity restrictions (including the restrictions on insurance activities) imposed by the Bank Holding Company Act to the same extent that bank holding companies are subject to them (12 USC 3106(a)). This means that Canadian banks with branches or agencies in the U.S. would be subject to the new restrictions imposed by the Proxmire bill on bank holding company insurance activities. However, Canadian (and other foreign) banks in the U.S. will be able to take advantage of the exception provided by S. 1886 for insurance activities of State bank subsidiaries of bank holding companies; the fact that they are required by the IBA to elect a "home" state in the U.S. has only tangential relevance to their ability to acquire a State-chartered bank in the U.S. and engage in State-authorized insurance activities through that State bank. Canadian banks in the U.S. will have the same opportunity as U.S. bank holding companies--no more and no less--to take advantage of the limited exemption provided in the Proxmire bill for insurance activities of State-chartered banks. The following examples will explain how Canadian and other foreign banks in the U.S. will be able to use the Proxmire bill's limited exemption for State-chartered bank insurance activities.

First, a Canadian or other foreign bank in the U.S. could acquire a State-chartered bank located in its IBA "home" state (thus becoming a bank holding company within the meaning of the BHC Act) and engage in any insurance activities authorized for that State bank under State law, within the limitations imposed by S. 1886. Thereafter, under S. 1886, the foreign bank would be limited by the Proxmire bill to engaging in State-authorized insurance activities in the one State where its State bank

subsidiary is located. That one State, also its IBA home State, would become its principal place of banking business for purposes of the BHC Act and the insurance restrictions of S. 1886. Under the BHC Act, the principal place of banking business of a foreign-owned bank holding company is determined without regard to its foreign banking operations.

Section 5 of the IBA provides that no foreign bank may acquire a bank located outside of its IBA "home" State if such an acquisition would be prohibited under section 3(d) of the BHC Act (12 USC 3103(a)). If section 3(d) would allow the acquisition, however, a foreign bank could acquire a State-chartered bank outside its IBA home state. Once the foreign bank acquires that bank, however, it becomes a bank holding company under the BHC Act and its principal place of banking business under the BHC Act becomes the one State where that State-chartered bank is located. Thus, a foreign bank could acquire a State-chartered bank outside its home State (for IBA purposes) if permitted under section 3(d) and engage in insurance activities authorized for that State bank under State law, within the limitations imposed by S. 1886. Once it acquired that State bank, however, it would be limited by S. 1886 to engaging in State-authorized insurance activities in the one State where its State bank subsidiary is located. Even though the foreign bank's home state under the IBA and its principal place of banking business under the BHC Act would be different States in this example, the foreign bank would nonetheless be limited by S. 1886 to engaging in State-authorized State-bank insurance activities in the one State that constituted its principal place of banking business under the BHC Act.

To summarize briefly, a Canadian bank in the U.S. would be able to take advantage of the limited exemption for State-authorized State bank insurance activities to the same degree as would domestic bank holding companies. Both Canadian-owned and U.S. bank holding companies would be limited by S. 1886 to taking advantage of the exemption for State-authorized State bank activities in one State that is their principal place of banking business under section 3(d) of the BHC Act.

11. Question:

Is is correct that the provision of insurance by banks, either Canadian or U.S., is a matter covered by Article 17, which governs financial services, and not Article 14, which governs services generally?

11. Answer:

Insurance is covered in three different chapters of the FTA, Chapters 14 (Services), 16 (Investment) and 17 (Financial Services). The particular chapter that governs an issue relating to insurance will depend very much on the specific facts involved. We understand that your specific concern arises from the provision in S. 1886 that allows a state-chartered subsidiary of a bank holding company to sell insurance in that subsidiary only if the subsidiary is located in the state which is the principal place of banking business of the bank holding company. In our view, this provision does not pose a problem vis-a-vis the FTA.

Since S. 1886 and the relevant state laws deal with the powers of banks, rather than with the provision of insurance per se, we believe that this proposal falls within the scope of Chapter 17. This provision does not breach any obligation of Chapter 17.

Moreover, even if it were argued that Chapter 14 applied, we do not believe that this provision or the state laws involved are inconsistent with the obligations of that chapter. First, if S. 1886 becomes law before January 1, 1989, it will be grandfathered under Art. 1402(5). Of course, all existing state measures are similarly grandfathered independent of the date of passage of S. 1886. Moreover, even if S. 1886 passes after January 1, 1989, an argument can be made that it is grandfathered with respect to this issue pursuant to 1402(5)(c).

Second, we do not believe that the provision is discriminatory. As to the treatment of bank holding companies, S. 1886 does not treat U.S.-owned bank holding companies more favorably than foreign-owned bank holding companies. Similarly, state statutes that permit all state chartered banks to engage in insurance activities are not per se discriminatory. The question has been raised as to whether the state laws, which authorize insurance activities only by state-chartered banks, would be inconsistent with Art. 1402(2). Again, we note that all such state laws existing prior to January 1, 1989, are grandfathered.

Finally, it should be noted that the national treatment obligation of Chapter 14 is subject to a prudential exception (1402(3)) that permits deviation from national treatment when necessary for prudential, fiduciary, health and safety, or consumer protection reasons. Thus, if the limitation to state- chartered banks is based on prudential or fiduciary concerns, there would be no breach of Chapter 14.

12. Question:

Am I correct that nothing in the U.S./Canada Free Trade Agreement would restrict the right of any state to enforce or enact any law restricting the insurance activities of banking institutions?

12. Answer:

As discussed in Question 11, we believe that laws focusing on the permissible activities of banks fall within the scope of Chapter 17. Chapter 17 contains no obligations that bind the states.

13. Question:

Does Canada have a hostile takeovers law?

13. Answer:

The Canadian Embassy has advised us that Canada does not have a hostile takeover law at either the federal or the provincial level.